

भारत का राजपत्र **The Gazette of India**

प्राधिकार से प्रकाशित
 PUBLISHED BY AUTHORITY

सं० 21] नई दिल्ली, शनिवार, मई 25, 1968/अश्वि 4, 1890

No. 21] NEW DELHI, SATURDAY, MAY 25, 1968/JYAISTHA 4, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
 Separate paging is given to this Part in order that it may be filed as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भारत के असाधारण राजपत्र 10 मई, 1968 तक प्रकाशित किये गये :—

The undermentioned Gazettes of India Extraordinary were published up to the 10th May, 1968 :—

Issue No.	No. and Date	Issued by	Subject
147	S.O. 1524, dated 30th April, 1968.	Election Commission of India.	Making certain corrections in the Delimitation of Parliamentary and Assembly Constituencies Order, 1966.
148	S.O. 1597, dated 30th April, 1968.	Ministry of Information and Broadcasting.	Approval of the Films as specified therein.
149	S.O. 1598, dated 30th April, 1968.	Ministry of Food, Agriculture, Community Development & Cooperation.	Amendments in the notification No. S.O. 2069, dated 15th June, 1967.
150	S.O. 1599, dated 1st May, 1968.	Ministry of Labour, Employment and Rehabilitation.	Appointment of an Administrative body under the Madras Unregistered Dock Workers (Regulation of Employment) Scheme, 1957.
151	S.O. 1600, dated 1st May, 1968	Election Commission of India.	Further amendment in notification No. 434/HN/67 dated 23rd November, 1967.

Issue No.	No. and Date	Issued by	Subject
152	S.O. 1601, dated 1st May, 1968.	Ministry of Law	Bye-election to the House of the People 27-Bijapur Parliamentary Constituency.
153	S.O. 1602, dated 2nd May, 1968.	Cabinet Secretariat	Further amendments in the Government of India (Allocation of Business) Rules, 1961.
154	S.O. 1603, dated 2nd May, 1968.	Ministry of Transport and Shipping.	Rates for the carriage of a passenger in a Ship.
155	S.O. 1604, dated 2nd May, 1968.	Ministry of Commerce.	The Cotton Textiles (Control) Amendment Order, 1963.
156	S.O. 1605, dated 3rd May, 1968.	Election Commission of India.	Bye-election in the House of the People from Madhipura Parliamentary Constituency in the State of Bihar.
	S.O. 1606, dated 3rd May, 1968.	Do.	Appointment of dates for the above bye-election (S.O. 1605).
	S.O. 1607, dated 3rd May, 1968.	Do.	Fixation of hours for the above bye-election (S.O. 1605).
157	S.O. 1608, dated 3rd May, 1968.	Ministry of Commerce.	Quality control and preshipment inspection of human hair.
	S.O. 1609, dated 3rd May, 1968.	Do.	The Export of Human Hair (Inspection) Rules, 1968.
	S.O. 1610, dated 3rd May, 1968.	Do.	Appointment of a panel of Experts for hearing appeals.
158	S.O. 1611, dated 3rd May, 1968.	Ministry of Law	Bye-election to the House of the People 6-Dausa Parliamentary Constituency.
159	S.O. 1612, dated 6th May, 1968.	Election Commission of India.	Bye-election to the House of the People from the 10-Krishnagar Parliamentary Constituency.
160	S.O. 1613, dated 6th May, 1968.	Ministry of Commerce.	Corrigenda to S.O. 3411, dated 20th September, 1967.
	S.O. 1614, dated 6th May, 1968.	Do.	Corrigenda to S.O. 3412, dated 20th September, 1967.
161	S.O. 1615, dated 6th May, 1968.	Ministry of Home Affairs.	Delegation of powers under the Code of Criminal Procedure, 1898 (5 of 1898), to the Administrators of Union Territories.
162	S.O. 1616, dated 7th May, 1968.	Ministry of Commerce.	Quality control and preshipment inspection of Vacuum Flasks.
	S.O. 1617, dated 7th May, 1968.	Do.	The Export of Vacuum Flasks (Inspection) Rules, 1968.

Jama No.	No. and Date	Issued by	Subject
	S.O. 1618, dated 7th May, 1968.	Ministry of Commerce	Recognition of inspection agencies for inspection of Vacuum flasks meant for export.
163	S.O. 1676, dated 7th May, 1968.	Do.	Further amendments to the Exports (Control) Order, 1968.
164	S.O. 1677, dated 7th May, 1968.	Election Commission of India.	Bye- Election to the House of the People from the Kokrajhar (S.T.) Parliamentary Constituency.
165	S.O. 1678, dated 8th May, 1968.	Ministry of Information and Broadcasting.	Approval of the films as specified therein.
166	S.O. 1679, dated 8th May, 1968.	Election Commission of India.	Appointment of some officers to assist the Returning Officer for Kokrajhar Parliamentary Constituency.
167	S.O. 1680, dated 9th May, 1968.	Do.	Addition in notification No. 56/67-III, dated 26th September, 1967.
168	S.O. 1681, dated 9th May, 1968.	Ministry of Commerce.	Further amendment to the Exports (Control) Order, 1968.
169	S.O. 1682, dated 10th May, 1968.	Do.	Amendment in the notification No. S.O. 77, dated 6th March, 1965.
170	S.O. 1683, dated 10th May, 1968.	Ministry of Railways	Submission of the report by the Commission of Inquiry.

ऊपर लिखे असाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जायेंगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुंच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

MINISTRY OF HOME AFFAIRS

New Delhi, the 17th May 1968

S.O. 1764.—In exercise of the powers conferred by section (1) of section 492 of the Code of Criminal Procedure, 1898 (5 of 1898) the Central Government

hereby appoints Shri Pratap Narain Singh, Advocate, Varanasi, as a Public Prosecutor for the conduct of case R. C. No. 2/68-CIA-I, C.B.I., New Delhi, against accused Bharat Lal and others in the court of the District and Sessions Judge, Varanasi or any other court subordinate to it.

[No. 4/8/68-Poll.I(A).]

T. C. A. SRINIVASAVARADAN, Jt. Secy.

New Delhi, the 17th May 1968

S.O. 1765.—In exercise of the powers conferred by clause (2) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Authentication (Orders and other Instruments) Rules, 1958, namely:—

1. (1) These rules may be called the Authentication (Orders and other Instruments) Second Amendment Rules, 1968.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 2 of the Authentication (Orders and other Instruments) Rules, 1958,—

(i) for clause (f), the following clause shall be substituted, namely:—

“(f) in the case of orders and other instruments relating to the Ministry of Finance (Department of Expenditure) by a Finance Officer or an Assistant Finance Officer or a Deputy Assistant Financial Adviser; or”

(ii) for clause (y), the following clause shall be substituted, namely:—

“(y) in the case of orders and other instruments relating to the Ministry of Finance (Department of Economic Affairs) by a Director, or Controller or Deputy Controller of Capital Issues, or Joint Director (Stock Exchange) or Senior Accounts Officer in that Department; or”

[No. 3/2/68-Pub. I.]

CORRIGENDUM

New Delhi, the 16th May 1968

S.O. 1766.—In the Government of India Ministry of Home Affairs' notification dated the 2nd April, 1968, published as S.O. 1292 in the Gazette of India Extraordinary Part II, Section 3, sub-section (ii), dated the 2nd April, 1968.

For “Dr. Syed Nurul Hasan” read “Dr. Saiyid Nurul Hasan”.

[No. F. 24/1/66-Pub. I.]

K. R. PRABHU, Jt. Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 15th May 1968

S.O. 1767.—In pursuance of clause (a) of sub-section (1) of section 19 read with sub-section (1) of section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government hereby reappoints Shri Kantilal T. Desai as the Vice-Chairman of the State Bank of India for a further term of two years with effect from the 8th June, 1968.

[No. F. 8/66/68-SB.]

New Delhi, the 16th May 1968

S.O. 1768.—Statement of the Affairs of the Reserve Bank of India, as on the 10th May, 1968

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid Up	5,00,00,000	Notes	25,72,77,000
		Rupee Coin	3,19,000
Reserve Fund	80,00,00,000	Small Coin	3,90,000
		Bills Purchased and Discounted:—	
National Agricultural Credit (Long Term Operations) Fund .	131,00,00,000	(a) Internal
		(b) External
		(c) Government Treasury Bills	69,13,94,000
National Agricultural Credit (Stabilisation) Fund	25,00,00,000	Balances Held Abroad*	116,29,63,000
		Investments**	200,53,17,000
		Loans and Advances to:—	
National Industrial Credit (Long Term Operations) Fund .	30,00,00,000	(i) Central Government
		(ii) State Governments@	98,13,49,000
Deposits:—		Loans and Advances to:—	
(a) Government—		(i) Scheduled Commercial Banks†	14,836,62,000
(i) Central Government	50,92,64,000	(ii) State Co-operative Banks‡	145,22,48,000
(ii) State Governments	7,36,99,000	(iii) Others	2,39,71,000

LIABILITIES	Rs.	ASSETS	Rs.
		Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund :—	
		(a) Loans and Advances to :—	
(b) Banks—		(i) State Governments	31,71,16,000
(i) Scheduled Commercial Banks	135,34,22,000	(ii) State Co-operative Banks	11,73,25,000
(ii) Scheduled State Co-operative Banks	6,11,25,000	(iii) Central Land Mortgage Banks
(iii) Non-Scheduled State Co-operative Banks	65,80,000	(b) Investment in Central Land Mortgage Bank Debentures Loans and Advances from National Agricultural Credit (Stabilisation) Fund	7,93,62,000
(iv) Other Banks	6,28,000		
(c) Others	327,51,26,000	Loans and Advances to State Co-operative Banks	7,03,76,000
Bills Payable	20,78,87,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—	
Other Liabilities	119,35,27,000	(a) Loans and Advances to the Development Bank	6,08,93,000
		(b) Investment in bonds/debentures issued by the Development Bank
		Other Assets	68,72,96,000
Rupees	939,12,58,000	Rupees	939,12,58,000

*Includes Cash and Short-term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 110,11,45,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

‡Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 15th day of May, 1968.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 10th day of May 1968

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	25,72,77,000		Gold Coin and Bullion:—		
Notes in circulation	3388,76,07,000		(a) Held in India	115,89,25,000	
Total Notes issued		3414,48,84,000	(b) Held outside India	
			Foreign Securities	205,42,00,000	
			TOTAL		322,31,25,000
			Rupee Coin		69,18,01,000
			Government of India Rupee Securities		302,99,50,000
			Internal Bills of Exchange and other Commercial paper		
TOTAL LIABILITIES		3414,48,84,000	TOTAL ASSETS		3414,48,84,000

Dated the 15th day of May 1968.

B. N. ADARKAR,
Dy. Governor.

[No. F. 3(3)-BC/68]

V. SWAMINATHAN, Under Secy.

(Department of Revenue and Insurance)

CUSTOMS

New Delhi, the 25th May 1968

S.O. 1769.—In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby rescinds the notification of the Government of India, in the Ministry of Finance (Department of Revenue and Insurance) No. 48-Customs, dated the 26th March, 1966.

This notification will come into force on the 1st June, 1968.

[No. 71/F. No. 14/3/68-LC.II.]

S.O. 1770.—In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby appoints the Collector of Central Excise, Bombay to be the Collector of Customs for the area in respect of which he exercises jurisdiction and also for the areas falling within the districts of Thana and Kolaba in the State of Maharashtra.

This notification will come into force on the 1st June, 1968.

[No. 72/F. No. 14/3/68-LC.II.]

ORDER

STAMPS

New Delhi, the 25th May 1968

S.O. 1771.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permit the Bombay Municipal Corporation to pay Stamp duty chargeable on the debentures issued to the value of Rs. 7.35,950 at the consolidated rate of 1 per cent as provided under section 8 (1) of the said Act.

[No. 8/68. F. No. 1/29/68-Stamps/Cus. VII.]

M. S. SUBRAMANYAM, Under Secy.

CENTRAL BOARD OF DIRECT TAXES

INCOME-TAX

New Delhi, the 25th April 1968

S.O. 1772.—In exercise of the powers conferred by section 126 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following addition to the Schedule annexed to its Notification No. 1 (F. No. 55/233/63-IT) dated the 18th May, 1964:

After serial No. 53 in the said Schedule, the following items shall be added:

1	2	3	4	5	6
54	All Jockeys, Trainers and book makers in the State of Madras and Union Territory of Pondicherry excluding Mahe and Yanam.	4th I.T.O., City Circle V, Madras.	Inspecting Assistant Commissioner of Income-tax who has been appointed to perform the function of an Inspecting Assistant Commissioner in respect of the I.T.O. referred to in column 3.	Appellate Assistant Commissioner of Income-tax who has been invested with powers to hear appeals against the decision of the Income-tax Officer referred to in column 3.	Commissioner of Income-tax Madras-I, Madras.

This Notification shall take effect from 15th May, 1968.

[No. 5/F. No. 55/423/67-IT (A-II).]

New Delhi the 12th May 1968

S.O. 1773.—In exercise of the powers conferred by Section 126 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby delete S. No. 32 and the entries thereagainst from the Schedule annexed to its Notification S.R.O. 1214 (No. 44 Income-tax), dated the 1st July, 1952.

[No. 10/F. No. 55/4/68-IT(A-II).]

New Delhi, the 13th May 1968

S.O. 1774.—In exercise of the powers conferred by Section 126 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following addition to the Schedule annexed to its Notification No. 1 (F. No. 55/233/63-IT) dated the 18th May, 1964:

After serial No. 54 in the said Schedule, the following item shall be added:

1	2	3	4	5	6
55	Convenanted officers of National and Grindlays Bank Ltd. stationed anywhere in India.	I.T.O. E-Ward Distt. VA Calcutta.	J. A. C. Range-XI Calcutta	A. A. C. J-Range, Calcutta	C. I. T. W.P. II, Calcutta.

This Notification shall take effect from 20th May, 1968.

[No. 12/F. No. 55/31/68-IT(A-II).]

CORRIGENDA

New Delhi, the 12th May 1968

S.O. 1775.—In exercise of the powers conferred by Section 126 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendment to the Schedule annexed to its Notification No. 1 (F. No. 55/233/63-IT) dated the 18th May, 1964:

In the said Schedule against S. No. 22. for the existing entry in Column 2, the following entry shall be substituted:

"All Employees of the General Electric Company of India Private Limited stationed at New Delhi, Karpur, Patna, Jaipur and Chandigarh and in the states of Orissa and Assam."

[No. 11/F. No. 55/4/68(A-II).]

New Delhi, the 13th May 1968

S.O. 1776.—In exercise of the powers conferred by sub-section (1) of Section 121 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby makes the following amendments to the Schedule appended to its notification No. 20 (F. No. 55/1/62-IT) dated the 30th April, 1963 published as S.O. 1293 on pages 1454-1457 of the Gazette of India Part II Section 3 Sub-section (ii) dated the 11th May, 1963 as amended from time to time:—

"Against S. No. 9, Madras I under column 3 of the schedule appended thereto, the existing entry against item 6 shall be substituted by the following:

"6. Salem—All circles".

[No. 34/F. No. 55/134/68-IT (A-II).]

A. RAGHAVENDRA RAO, Under Secy.

COLLECTORATE OF CENTRAL EXCISE, WEST BENGAL, CALCUTTA**CENTRAL EXCISES***Calcutta, the 23rd April 1968*

S.O. 1777.—In exercise of the powers conferred on me under Rule 5 of the Central Excise Rules, 1944 I hereby empower the Central Excise Officers specified in Column 2 of the sub-joined Table to exercise within their respective jurisdiction the powers of the "Collector" under the Central Excise Rules, 1944 enumerated in Column 1 thereof subject to the limitations set out in Column 3 of the said Table.

TABLE

Central Excise Rule	Rank of officer	Where the duty involved in each case does not exceed.
1	2	3
191-B(5)	Deputy Collectors.	Rs. 10,000/-
191-B(5)	Asstt. Collectors.	Rs. 1,000/-
191-B(5)	Superintendents	Rs. 250/-

[No. 1/68.]

D. R. KOHLI,
Collector-**CENTRAL EXCISE COLLECTORATE, ALLAHABAD***Allahabad, the 2nd May 1968*

S.O. 1778.—In exercise of the powers conferred on me by Rule 5 of the Central Excise Rules, 1944, I authorise the Central Excise Officers specified in column (2) of the Table below to exercise within their respective jurisdiction the powers of the Collector under rule 191-B(5) of the aforesaid Rules subject to the conditions and limitations indicated in column (3) of the said Table:

TABLE

Sl. No.	Designation of officers	Conditions and limitations
1.	Assistant Collectors	Only in cases where the duty involved in each case does not exceed Rs. 1,000/-
2.	Senior Superintendents	Only in cases where the duty involved in each case does not exceed Rs. 250/-

(No. F. IV(13)76-Pol/68.)

[No. 1-C.E./68.]

M. N. MATHUR, Collector.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE, POONA**CENTRAL EXCISES***Poona, the 9th May 1968*

S.O. 1779.—In exercise of the powers conferred on me under Rules 143 and 233 of the Central Excise Rules, 1944, I hereby order that the following types of processing operations may be undertaken by the warehouse licensees, for preservation, sale and disposal of tobacco:

1. Crushing of Deshi and I.A.C. Angad Tobacco for obtaining different sizes of flake tobacco,

2. Crushing of single or larger size of flake tobacco into small size of flake (Jarda or Farma) subject to the restrictions imposed from time to time.
3. Separation of dust from flake and rawa tobacco subject to the restrictions imposed from time to time.
4. Mixing of tobacco of different varieties.
5. Pounding of "Angad Kadi" to obtain "Tayar Kadi",
6. Packing and repacking of tobacco for preservation, and to suit the requirement of trade.

[No. F. 2/Central Excise/1968.]

D. N. LAL,

Collector of Central Excise, Poona.

DELHI DEVELOPMENT AUTHORITY

New Delhi, the 2nd May 1968

S.O. 1780.—In pursuance of section 52 of the Delhi Development Act (No. 61 of 1957), the Delhi Development Authority hereby directs that the powers exercisable by it under sub-section (1) of section 10 of the said Act may also be exercised by the Chairman, subject to the condition that such powers shall be exercised in respect only of such proposals as have been supported by the Standing Committee set up by the Authority by resolution No. 425 dated the 12th May, 1967.

[No. F. 1(41)/68-G.A.]

M. L. MONGIA, Secy.

MINISTRY OF COMMERCE

New Delhi, the 15th May 1968

S.O. 1781.—The following bye-laws made by the Coir Board, in exercise of the powers conferred by Section 27 of the Coir Industry Act, 1953 (45 of 1953), and confirmed by the Central Government, are hereby published, as required by sub-section (2) of the said section, namely:—

1. **Short title, commencement and application.**—(1) These bye-laws may be called the Coir Board Employees (Conduct) Bye-laws, 1968.

(2) They shall come into force at once.

(3) They shall apply to every person appointed by the Board under sub-section (2) of section 9 of the Coir Industry Act, 1953 (45 of 1953) and also to employees lent by the Central Government or a State Government.

Provided that the Board may, with the concurrence of the Government of India, exempt from the operation of any of these rules, any category or categories of employees belonging to Class III or Class IV.

2. **Definitions.**—In these bye-laws, unless the context otherwise requires—

(a) "Act" means the Coir Industry Act, 1953 (45 of 1953);

(b) "Board" means the Coir Board established under section 4 of the Act;

(c) "Employees" means any person appointed by the Coir Board under sub-section (2) of section 9 of the Act including an employee on deputation from the Central or a State Government.

(d) "Members of the family" in relation to an employee includes—

(i) the wife or husband as the case may be, of the employee, whether residing with the employee or not but does not include a wife or husband as the case may be, separated from the employee under due legal procedure or order of a competent court;

- (ii) son or daughter or step-son or step-daughter of the employee and wholly dependent on him, but does not include a child or a step-child who is no longer in any way dependent on the employee or of whose custody the employee has been deprived by or under any law;
- (iii) any other person related, whether by blood or marriage to the employee or to the employee's wife or husband, and wholly dependent on the employee.
- (c) "Chairman" means Chairman of the Board;
- (f) "The Government" means the Central Government;
- (g) "Prescribed authority" means—
- (a) (i) the Board, in the case of an employee holding any Class I post, except where any lower authority is specifically specified by the Board for any purpose;
- (ii) The Chairman, in the case of an employee holding any Class II and Class III Posts.
- (iii) The Secretary in the case of an employee holding any Class IV Post.
- (b) In respect of an employee on foreign service or on deputation to any other office or any other Government the Chairman.

Explanation.—Class I, Class II, Class III and Class IV Posts shall mean those posts having the following salary grades:

Class I A post carrying a pay or a scale of pay with a maximum of not less than Rs 950.

Class II A post carrying a pay or a scale of pay with a maximum of not less than Rs. 575 but less than Rs. 950.

Class III A post carrying a pay or a scale of pay with a maximum of over Rs. 110 but less than Rs. 575.

Class IV A post carrying a pay or a scale of pay with maximum of Rs 110 or less.

(h) "Secretary" means the Secretary of the Board

3. **General.**—(1) Every employee shall at all times—

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty;
- (iii) do nothing which is unbecoming of an employee;
- (iv) keep absolute discipline, both in the office as well as outside,
- (v) obey the orders of superior authorities,
- (vi) avail leave of all nature except casual leave only after getting it sanctioned,
- (vii) join duty on the expiry of leave already sanctioned;
- (viii) be regular and punctual in attendance

Explanation.—The question whether any particular employee has contravened the provisions of these bye-laws, in case of doubts, is to be decided by the prescribed authority.

- (2) (i) Every employee holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority;
- (ii) No employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the directions of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation.—Nothing in clause (2) (ii) shall be construed as empowering an employee to evade his responsibilities by seeking instructions from or approval of a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

4. Employment of near relatives of employees in private undertaking enjoying Board's patronage.—(1) No employee shall use his position or influence directly or indirectly to secure employment for any member of his family in any private undertaking.

(2) (i) No Class I Officer shall, except with the previous sanction of the Board permit his son, daughter or other dependent to accept employment in any private undertaking with which he has official dealings or in any other undertaking having official dealings with the Board:

Provided that where the acceptance of the employment cannot await prior permission of the Board or is otherwise considered urgent, the matter shall be reported to the Board; and the employment may be accepted provisionally subject to the permission of the Board.

(ii) An employee shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any private undertaking, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that undertaking:

Provided that no such intimation shall be necessary in the case of a Class II Officer if he has already obtained the sanction of, or sent a report to, the Board under clause (i).

(3) No employee shall in the discharge of his official duties deal with any matter or give or sanction any contract to any undertaking or any other person if any member of his family is employed in that undertaking or under that person or if he or any member of his family is interested in such matter or contract in any other manner and the employee shall refer every such matter or contract to his official superior and the matter or contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made.

5. Taking part in politics and elections.—(1) No employee shall be a member of, or be otherwise associated with any political party or any organisation which takes part in politics; nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

(2) It shall be the duty of every employee to endeavour to prevent any member of his family from taking part in, subscribing in aid of or assisting in any other manner any movement or activity which is, or tends directly or indirectly to be, subversive of the Government as bye-law established and where an employee is unable to prevent a member of his family from taking part in, or subscribing in aid of or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Board.

(3) If any question arises whether the party is a political party or whether any organisation takes part in politics or whether any movement or activity falls within the scope of clause (2), the decision of the Board thereon shall be final.

(4) No employee shall canvass or otherwise interfere with or use his influence in connection with or take part in, an election to any legislature or local authority:

Provided that—

(i) an employee qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) an employee shall not be deemed to have contravened the provisions of this clause by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation.—The display by an employee on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this clause.

6. Joining of Associations by Board's employees.—No employee shall join, or continue to be a member of, an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality.

7. Demonstrations and Strikes.—No employee shall—

- (i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or which involves contempt of court, defamation or incitement to any offence, or
- (ii) resort to or in any way abet any form or strike in connection with any matter pertaining to his service or the service of any other employee.

8. Connection with press or radio.—(1) No employee shall, except with the previous sanction of the Chairman, own, wholly or in part, or conduct or participate in the editing or management of, any newspaper or other periodical publication.

(2) No employee shall, except with the previous sanction of the Chairman or of the prescribed authority or except in the *bonafide* discharge of his duties.

- (a) publish a book himself or through a publisher, or contribute an article to a book for a compilation of articles, or
- (b) participate in a radio broadcast or contribute an article or write a letter to a newspaper or periodical, either in his own name or anonymously or pseudonymously or in the name of any other person :

Provided that no such sanction shall be required—

- (i) if such publication is through a publisher and is of a purely literary, artistic or scientific character; or
- (ii) if such contribution, broadcast or writing is of a purely literary, artistic or scientific character.

9. Criticism of the Board or Government.—No employee shall, in any radio broadcast or in any document published in his own name or anonymously, pseudonymously or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion—

- (i) which has the effect of an adverse criticism of any current or recent policy or action of the Board, the Central Government or a State Government; or
- (ii) which is capable of embarrassing the relations between the Board, the Central Government and the Government of any State.
- (iii) which is capable of embarrassing the relations between the Board, the Central Government and the Government of any foreign State:

Provided that nothing in this bye-law shall apply to any statements or views expressed by an employee in his official capacity or in the due performance of the duties assigned to him.

10. Evidence before Committee or any other authority.—(1) Save as provided in clause (3), no Board's employee shall, except with the previous sanction of the Chairman, give evidence in connection with any enquiry conducted by any person, committee or authority.

(2) Where any sanction has been accorded under clause (1), no employee giving such evidence shall criticise the policy or any action of the Board, the Central Government or of a State Government.

(3) Nothing in this bye-law shall apply to—

- (a) evidence given at any enquiry before an authority appointed by the Board, the Central Government, Parliament or a State Legislature; or
- (b) evidence given in any judicial enquiry; or
- (c) evidence given at any departmental enquiry ordered by authorities subordinate to the Board, or the Central Government.

11. Unauthorised communication of information.—No employee shall, except in accordance with any general or special order of the Board or the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any other employee or to any other person to whom he is not authorised to communicate such document or information.

12. Subscription.—No employee shall, except with previous sanction of the Chairman or of the prescribed authority, ask for or accept contributions to, or otherwise associate himself with the raising of, any funds or other collections in cash or in kind in pursuance of any object whatsoever.

13. Gifts.—(1) Save as otherwise provided in these bye-laws, no employee shall accept, or permit any member of his family or any person acting on his behalf to accept, any gift.

Explanation.—The expression "gift" shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than a near relative or personal friend having no official dealings with the employee.

Note (i).—A casual meal, lift or other social hospitality shall not be deemed to be gift.

Note (ii).—An employee shall avoid accepting lavish hospitality or frequent hospitality from any individually having official dealings with him or from industrial or commercial firms, organisations etc.

(2) On occasions, such as weddings, anniversaries, funerals, or religious functions, when the making of a gift is in conformity with the prevailing religious or social practice, an employee may accept gifts from his near relatives but he shall make a report to the Board if the value of any such gift exceeds—

- (i) Rs. 500.00 in the case of a employee holding any Class I or Class II Post;
- (ii) Rs. 250.00 in the case of an employee holding any Class III post; and
- (iii) Rs. 100.00 in the case of an employee holding any Class IV post.

(3) On such occasions as are specified in clause (2) an employee may accept gifts from his personal friends having no official dealing with him, but he shall make a report to the Board if the value of any such gift exceeds—

- (i) Rs. 200.00 in the case of an employee holding any Class I or Class II Post,
- (ii) Rs. 100.00 in the case of an employee holding any Class III post, and
- (iii) Rs. 50.00 in the case of an employee holding any Class IV Post.

(4) In any other case, an employee shall not accept any gift without the sanction of the Chairman if the value thereof exceeds—

- (i) Rs. 75.00 in the case of an employee holding any Class I or Class II Post, and
- (ii) Rs. 25.00 in the case of an employee holding any Class III and Class IV Post.

14. Public demonstrations in honour of Board's employees.—No employee shall, except with the previous sanction of the Chairman, receive any complimentary or validictory address or accept any testimonial or attend any meeting or entertainment held in his honour, or in the honour of any other employee:

Provided that nothing in this bye-law shall apply to—

- (i) a farewell entertainment of a substantially private and informal character held in honour of an employee or any other employee on the occasion of his retirement or transfer or any person who has recently quit the service of the Board; or
- (ii) the acceptance of simple and inexpensive entertainment arranged by public bodies or institutions.

NOTE.—Excise of pressure or influence of any sort on any Board's employee to induce him to subscribe towards any farewell entertainment even if it is of a substantially private or informal character, and the collection of subscription from Class III or Class IV employees under any circumstances for the entertainment of any employee not belonging to Class III or Class IV, is forbidden.

15. Private trade or employment.—(1) No employee shall, except with the previous sanction of the Board, engage directly or indirectly in any trade or business or undertake any other employment:

Provided that an employee may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer, but he shall not undertake, or shall discontinue such work if so directed by the Board.

Explanation.—Canvassing by an employee in support of the business of insurance agency, commission agency, etc., owned or managed by his wife or any other member of his family shall be deemed to be a breach of this clause.

(2) Every employee shall report to the Board if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.

(3) No employee shall, without the previous sanction of the Board except in the discharge of his official duties take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force or any co-operative society for commercial purpose:

Provided that an employee may take part in the registration, promotion or management of a co-operative society substantially for the benefit of the employees, registered under the Co-operative Societies Act or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860) or any corresponding law in force.

(4) No employee may accept any fee for any work done by him for any public body or any private person without the sanction of the prescribed authority.

16. Investment, Lending and Borrowing.—(1) No employee shall speculate in any stock share or other investment.

Explanation.—Frequent purchase or sale or both of shares, securities or other investments shall be deemed to be speculation within the meaning of this clause.

(2) No employee shall make, or permit any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises whether any transaction is of the nature referred to in clause (1) or clause (2), the decision of the Board thereon shall be final.

(4) (i) No employee shall, save in the ordinary course of business with a bank or a firm of standing duly authorised to conduct banking business, either himself or through any member of his family or any other person acting on his behalf—

(a) lend or borrow money as principal or agent, to or from any person within the local limits of his authority or with whom he is likely to have official dealings, or otherwise place himself under any pecuniary obligation to such person, or

(b) lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that an employee may, give to, or accept from a relative or a personal friend, a purely temporary loan of a small amount free of interest, or operate a credit account with a *bona fide* trade or make an advance of pay to his private employee:

Provided further that nothing in this sub-clause shall apply in respect of any transaction entered into by an employee with the previous sanction of the Board.

(ii) When an employee is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of clause (2) or clause (4) he shall forthwith report the circumstances to the *prescribed authority* and shall thereafter act in accordance with such order as may be made by such authority.

17 Insolvency and habitual indebtedness.—An employee shall so manage his private affairs as to avoid habitual indebtedness or insolvency. An employee against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent shall forthwith report the full facts of the legal proceeding to the Board.

NOTE.—The burden of providing that the insolvency or indebtedness was the result of circumstances which with the exercise of ordinary diligence, the employee

could not have foreseen, or over which he had no control and had not proceeded from extravagant or dissipated habits, shall be upon the employee.

18. Movable, immovable and valuable property.—(1) Every employee shall on his first appointment to any post under the Board and thereafter at such intervals as may be specified by the Board, submit a return of his assets and liabilities in such form as may be prescribed by the Board, giving the full particulars regarding:—

- (a) the immovable property inherited by him, or owned or acquired by him or held by him or lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;
- (b) shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him.
- (c) other movable property inherited by him or similarly owned, acquired or held by him.
- (d) debts and other liabilities incurred by him directly or indirectly.

NOTE I.—Clause (1) shall not ordinarily apply to employees belonging to Class IV but the Board may direct that it shall apply to any such employee or class of such employees.

NOTE II.—In all returns, the values of items of movable property worth less than Rs. 1,000.00 may be added and shown as a lump sum. The value of articles of daily use such as cloths, utensils, crockery, books etc. need not be included in such return.

NOTE III.—Every employee who is in service on the date of the commencement of these bye-laws shall submit a return under this clause on or before such date as may be specified by the Board after such commencement.

(2) No employee shall except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family—or in the name of any other person:—

Provided that the previous sanction of the prescribed authority shall be obtained by the employee if any such sanction is—

- (i) with a person having official dealings with the employee; or
- (ii) otherwise than through a regular or reputed dealer.

(3) Every employee shall report to the prescribed authority every transaction entered into by him, either in his own name or in the name of a member of his family, in respect of movable property, if the value of such property exceeds Rs. 1,000.00 in the case of an employee holding any Class I or Class II Post or Rs. 500.00 in the case of an employee holding any Class III or Class IV post:

Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is—

- (i) with a person having official dealing with the employee; or
- (ii) otherwise than through a regular or reputed dealer.

(4) The Board or the prescribed authority may, at any time, by general or special order, require an employee to furnish, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so required by the Board or the prescribed authority, include the details of the means by which, or the source from which, such property was acquired.

(5) The Board may exempt any category of employees belonging to Class III or Class IV from any of the provisions of this bye-law except clause (4). No such exemption shall, however, be made without the concurrence of the Central Government.

Explanation.—For the purpose of this bye-law the expression 'movable' property includes—

- (a) Jewellery, insurance policies the annual premia of which exceed Rs. 1000.00 or one sixth of the total annual emoluments received from the Board whichever is less, shares, securities and debentures;

- (b) loans advanced by such employee whether secured or not;
- (c) motor cars, motor cycles, horses, or any other means of conveyance;
and
- (d) refrigerators, radios and radiograms.

19. Vindication of acts and character of employees.—(1) No employee shall except with the previous sanction of the Chairman, have recourse to any court or to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of a defamatory character.

(2) Nothing in this bye-law shall be deemed to prohibit an employee from vindicating his private character or any act done by him in his private capacity and where any action for vindicating his private character of any act done by him in private capacity is taken, the employee shall submit a report to the prescribed authority regarding such action.

20. Canvassing of non-official or other influence.—No employee shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Board.

21. Bigamous marriage.—(1) No employee who has a spouse living shall contract another marriage without first obtaining the permission of the Board, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No employee shall marry any person who has a spouse living without first obtaining the permission of the Board.

22. Consumption of intoxicating drinks and drugs.—An employee shall—

- (a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;
- (b) take due care that the performance of his duties is not affected in any way by the influence of any intoxicating drink or drug;
- (c) not appear in public place in a state of intoxication;
- (d) not habitually use any intoxicating drink or drug to excess.

23. Interpretation.—If any question arises relating to the interpretation of these bye-laws, it shall be referred to the Board who shall decide the same.

24. Delegation of powers.—The Board may, by general or special order, direct that any power exercisable by it under these bye-laws (except the powers under this bye-law) shall, subject to such conditions if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order.

[No. F. 13(5)/64-LPTC-Tex(D).]

A. G. V. SUBRAHMANIAM, Under Secy.

New Delhi, the 17th May 1968

S.O. 1782.—The Central Government hereby notifies that the Rajya Sabha has, in pursuance of clause (C) of sub-section (3) of section 4 of the Central Silk Board Act, 1948 (61 of 1948), elected on the 9th May, 1968, the following members of the Rajya Sabha to be members of the Central Silk Board:—

1. Shri Mahabir Dass.
2. Shri L. N. Misra.

[No. F. 22(1)/67-Tex(F).]

DAULAT RAM, Under Secy.

New Delhi, the 17th May 1968

S.O. 1783.—In exercise of the powers conferred by sub-section (1) of section 9 of Tea Act, 1953 (29 of 1953), the Central Government has appointed Shri Prem

Kumar, I.A.S., as Deputy Chairman, Tea Board, Calcutta, with effect from the afternoon of the 2nd April 1968 *vice* Shri S. N. Roy.

[No. 1(2)-Plant(A)/68.]

B. KRISHNAMURTHY, Under Secy.

(Office of the Chief Controller of Imports & Exports)

ORDER

New Delhi, the 3rd April 1968

S.O. 1784.—In exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, dated 7th December 1955 as amended, the undersigned hereby cancels the Exchange Control Purposes Copy of import licence No. G/AU/1033943/c/xx/26/ch/25, dated 22nd November 1967 for the import of spares for diesel engine valued at Rs. 3,652 issued in favour of the Garrison Engineer, Garhi (Udhampur), C/O 56 A.P.O.

The reasons for the cancellation is that the Exchange Control Purposes Copy has been mutilated. The licensee has requested for the issue of duplicate copy in lieu thereof.

To

Garrison Engineer,
Garhi (Udhampur) c/o 56 A.P.O.

[No. Cent/299/67-68/PLS/20.]

S. A. SESHAN,

Dy. Chief Controller of Imports and Exports,
for Chief Controller of Imports and Exports

(Office of the Jt. Chief Controller of Imports and Exports)

(Central Licensing Area)

ORDER

New Delhi, the 26th April 1968

S.O. 1785.—M/s IMPEX CORPORATION, 36, Guru Nanak Auto Market Kashmere Gate, Delhi were granted a *adhoc* licence No. F/EI/0161397/TIR/26/CD/26/NQQ/Adhoc dt. 30-1-68 for Rs. 1860/- for import of Dry fruit from Iran for Oct—Mar '68' licensing period. They have applied for duplicate customs and Exchange Control Copy of the said licence on the ground that the original customs and Exchange Control copies have been lost or misplaced. It is further stated by the party that the original customs copy of licence were not registered with any custom authority.

2. In support of this declaration, the applicant has filed an affidavit duly attested by Oath Commissioner stating that the original customs and Exchange Control Copy of the licence have been lost or misplaced.

3. I am satisfied that customs and Exchange Control Copies of licence No. P/EI/0161397/TIR/26/CD/26/NQQ/Adhoc dt. 30-1-68 for Rs. 1860/- has been lost and direct that duplicate Customs and Exchange Control Copies be issued to the applicant. The original Customs & Exchange Control copies of the licence are cancelled.

[No.F.21(a) (ii)/IV/692/Iran/Oct-Mar/68/IS/CLA.]

J. S. BEDI,

Joint Chief Controller of Imports & Exports.

MINISTRY OF INFORMATION AND BROADCASTING

CORRIGENDUM

New Delhi, the 13th May 1968

S.O. 1786.—In the Schedule in this Ministry's S.O. No. 1512 dated 15th April, 1968, appearing in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii) No. 138 dated 23rd April, 1968 under column 2 against S. No. 2 please read "Window to the World" for the existing entry "Window to the Word".

[No. F. 24/1/68-FP App. 1255.]

BANU RAM AGGARWAL, Under Secy.

MINISTRY OF PETROLEUM & CHEMICALS

New Delhi, the 8th May 1968

S.O. 1787.—Whereas it appears to the Central Government that it is necessary in the public interest that the transport of Petroleum from G.G.S. No. 1 to Oil Terminal at Sabarmati in the Kalol Oil Field, in Gujarat State, Pipelines should be laid by the Oil & Natural Gas Commission and that for the purpose of laying such Pipelines, it is necessary to acquire the Right of User in the land described in the Schedule annexed thereto.

2. Now, therefore, in exercise of the powers conferred by sub-section (i) of the Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this Notification object to the laying of the pipelines under the land to the Competent Authority, at Elempeeco, 4th floor, Sayaji Ganj, Opp. College Lokmanya Tilak Road, Baroda-5, in the Office of the Gujarat Pipelines Project (Oil & Natural Gas Commission), Baroda. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

State —Gujarat		Distt. —Ahmedabad		Tal. —Dascroi
Village	S. No.	Hector	Are	P. Are
Khora]	85	o	15	98
Khodivar	280	o	9	61
„	278	o	4	15

[No. 29/11/68-10C.]

R. N. CHOPRA, Under Secy.

(Department of Petroleum)

ORDER

New Delhi, the 10th May 1968

S.O. 1788.—In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in Supersession of the Order of the Government of India in the late Ministry of Mines and Fuel, No. S.O. 3524, dated the 13th November, 1962, the Central Government hereby directs that the powers conferred on it by section 3 of the said Act to make orders under clause (c)

of sub-section (2) of that section, shall, in relation to petroleum products, be exercisable also by a State Government or, in relation to a Union territory, by the Administrator thereof.

[No. F. 31/10/66-L&M]

R. S. GOPALAN, Under Secy.

MINISTRY OF HEALTH, FAMILY PLANNING AND URBAN DEVELOPMENT
(Department of Health and Urban Development)

New Delhi, the 29th April 1968

S.O. 1789.—In pursuance of rule 5A of the Public Premises (Eviction of Unauthorised Occupants) Rules 1958, the Central Government hereby authorises the Gazetted officer mentioned in column (1) below to hear and finally dispose of cases arising out of that rule and pertaining to public premises specified in column 2 below:—

Name of the Officer	Limits
1	2
1. Director of Administration, Directorate General of Health Services, New Delhi.	Premises under the administrative control of the Union Ministry of Health and Family Planning, within the limits of the Corporation of Calcutta as defined in the Calcutta Municipal Act, 1951.

[No. F. 9-6/64-ME (PG) (UG)]

V. K. SAMANTROY, Under Secy.

(Department of Health)

New Delhi, the 10th May 1968

S.O. 1790.—In exercise of the powers conferred by sub-section (4) of section 13 of the Indian Medical Council Act, 1958 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in Part II of the Third Schedule to the said Act, namely:—

In the said Part of the Third Schedule, after the entry "M.D. [University of Napoli (Naples), Italy]", the following entries shall be inserted, namely:—

"M.B., Ch. B. (Makerere University College of East Africa).

M. B. B. Ch. (University of Alexandria, U. A. R.).

M. D. (University of Graz, Austria).

M. D. (Loyola University, Stritch School of Medicine, Chicago, U. S. A.).

M. B. B. S. (Punjab University, West Pakistan).

[No. F. 18-28/67-MPT.]

ORDER

New Delhi, the 17th May 1968

S.O. 1791.—Whereas the Government of India in the late Ministry of Health has, by Notification No. 32-16/64-MPT, dated the 21st January, 1965, made, in exercise of the powers conferred by sub-section (1) of section 14 of the Indian Medical Council Act, 1956 (102 of 1956), recognised the medical qualification "M.D." granted by the Temple University, Philadelphia (U.S.A.) for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by the proviso to sub-section (1) of section 14 of the Indian Medical Council Act, 1956 (102 of 1956), the

Central Government hereby specifies a further period of two years commencing from the 3rd February, 1967, or so long as Dr. Robert R. Larsen who possesses the said qualification, continues to work in the Nekursini Christian Hospital, Khatnagar, Midnapore Distt. (West Bengal) to which he is attached for the time being for the purposes of teaching, research or charitable work, whichever is shorter, as the period to which the medical practice of the said Dr. Robert R. Larsen shall be limited subject to the condition that the said doctor continues to be enrolled as a medical practitioner for the said period in accordance with the law regulating the registration of medical practitioners in his country.

[No. F. 19-11/68-MPT.]

L. K. MURTHY, Under Secy.

(Department of Health and U.D.)

New Delhi, the 13th May 1968

S.O. 1792.—Whereas in pursuance of clause (d) of sub-section (2) of section 3 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Central Government has nominated Col A.K. Jadeja, Deputy Director (Food Inspection), QMG's Branch, Army Headquarters, New Delhi, vice Col. C.I. Somaya, as a member of the Central Committee for Food Standards;

And whereas in pursuance of clause (e) of sub-section (2) of section 3 of the said Act the State Governments of Assam and Madhya Pradesh have nominated Shri P.K. Das, Public Analyst, Assam, and Dr. P.M. Toshniwal, Public Analyst, Drug Testing Laboratory, Indore, as members of the Central Committee for Food Standards, with effect from the 5th July 1967 and the 6th July, 1967, respectively;

And whereas, in pursuance of clause (f) of sub-section (2) of section 3 of the said Act, the Central Government has nominated Dr. Jagdish Chander Sharma, Assistant Director of Health Services (Public Health), Himachal Pradesh, Simla, as a member of the C.C.F.S. vice Dr. D.K. Bhattacharya;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby directs that Shri P.K. Das, Public Analyst, Assam, and Dr. P.M. Toshniwal, Public Analyst, Drug Testing Laboratory, Indore, shall continue to be members of the Central Committee for Food Standards, and makes the following further amendments in the Notification of the Government of India in the late Ministry of Health No. SRO-1236 dated the 1st June, 1965, namely:—

In the said Notification:—

- (a) against item 8, for the existing entry, the following entry shall be substituted, namely:—
"Col. A. K. Jadeja, Deputy Director (Food Inspection), QMG's Branch, Army Headquarters, New Delhi."
- (b) against item 24, for the existing entry, the following entry shall be substituted, namely:—
"Dr. Jagdish Chander Sharma, Assistant Director of Health Services (Public Health), Himachal Pradesh, Kennedy House, Simla-4."

[No. F. 14-25/67-PH.]

M. C. JAIN, Under Secy.

**MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT
AND COÖPERATION**

(Department of Agriculture)

(Indian Council of Agricultural Research)

New Delhi, the 16th May 1968

S.O. 1793.—In pursuance of Regulation 2(iv) of the Standing Finance Committee Regulations, the following members of the Governing Body of the Indian Council of Agricultural Research have been elected by that Body at its meeting held on the 21st March, 1968 to be members of the

Standing Finance Committee of the Council for the periods indicated against each of them, or till such time as their successors are duly elected, whichever is later :—

1. Shri G. S. Dhillon, Member, Lok Sabha, Panjavar, District, Amritsar, Punjab (to represent Parliament). For the period ending the 29th May, 1968 and for a further period of one year from the 30th May, 1968.

2. Shri Shah Nawaz Khan, "Aithal Farm", Village Aithal, District Saharanpur, Uttar Pradesh.

3. Dr. N. K. Panikkar, Director, National Institute of Oceanography, Council of Scientific and Industrial Research, New Delhi. (Eminent Scientist).

4. Shri Shantilal B. Pandya, President, India Crop Improvement and Seed Producers' Association, Pandya Farm, Dohad (Gujarat). (To represent Agriculturists).

5. Dr. M. D. Patel, Director, Institute of Agriculture, Anand. (Eminent Scientist).

6. Dr. B. N. Uppal, Member, Board of Management, Punjab Agricultural University, Chandigarh.

7. Dr. K. Ramiah, Member, Rajya Sabha, 'Swathi', Malleswaram, Bangalore.

For a period of one year from the 30th May, 1968.

[No. 35(1)/67-CDN (I)]

R. B. JAIN,

Under secy.

(कृषि विभाग)

(भारतीय कृषि अनुसंधान परिषद्)

नई दिल्ली, 16 मई 1968

एस० नो० 1794 : स्थाई वित्त समिति की नियमावली के विनियम 2(4) के अनुसार भारतीय कृषि अनुसंधान परिषद् की शासी-निकाय के निम्नलिखित सदस्य उसी निकाय द्वारा 21 मार्च, 1968 को सम्पन्न उसकी बैठक में परिषद् की स्थायी वित्त समिति के सदस्य, उनके नामों के आगे निर्दिष्ट अवधि तक अथवा उनके उत्तराधिकारी नियुक्त किये जाने तक, जो भी बाव में हो, निर्वाचित किये गये :—

1. श्री जी० एस० छिल्लन, सदस्य, लोक-सभा, पंजा- 29 मई, 1968 तक तथा उसके पश्चात्
वर, जिला, अमृतसर, पंजाब (संसद् में प्रतिनिधित्व 30 मई 1968 से एक वर्ष की
के लिए) । अवधि तक ।

2. श्री शाहनवाज खां, एथल फार्म, ग्राम एथल, जिला
सहारनपुर-उत्तर प्रदेश ।

3. डा० एन० के० पणिकर, निवेशक, राष्ट्रीय समुद्र
विज्ञान संस्थान, वैज्ञानिक एवं औद्योगिक
अनुसंधान परिषद्, नयी दिल्ली (सुवि-ख्यात
वैज्ञानिक) ।

4. श्री शान्तीलाल बी० पांड्या, अध्यक्ष, भारत फसल
सुधार एवं बीज उत्पादक संस्था, पंड्या फार्म,
दोहद (गुजरात) (कृषकों के प्रतिनिधि) ।

30 मई 1968 से एक वर्ष की अवधि
के लिए ।

5. डा० एम० डी० पटेल, निदेशक, कृषि संस्थान,
अनन्त। (सुविख्यात वैज्ञानिक)
6. डा० बी० एन० उप्पल, सदस्य, प्रबन्ध मण्डल,
पंजाब कृषि विश्वविद्यालय, चण्डीगढ़।
7. डा० के० रमैया, सदस्य राज्य-सभा, "स्वाथी",
मल्लेश्वरम्, बंगलौर।

30 मई, 1968 से एक वर्ष की
अवधि के लिए।

[संख्या 35(1)/67 सी० डी० एन० (1)]

आर० बी० जैन, अवर सचिव।

MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS

(Department of Industrial Development)

New Delhi, the 7th May 1968

S.O. 1795.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Small Scale Industries Organisation (Class III and Class IV Posts) Recruitment Rules, 1960, namely :—

1. These rules may be called the Small Scale Industries Organisation (Class III and Class IV Posts) Recruitment (Second Amendment) Rules, 1968.
2. They shall come into force from the date of their publication in the Official Gazette.
3. In the Schedule annexed to the Small Scale Industries Organisation (Class III and Class IV Posts) Recruitment Rules, 1960, after the existing entries relating to class IV posts the following entries shall be inserted, namely :—

1	2	3	4	5	6	7	8	9	10	11	12
7. Binder	1	General Rs. 80—1—85 Central —2—95. Service Class IV Non-gazetted.	Not appli- cable	Below 25 years	<i>Essential :</i> Binder with know- ledge of book binding, handling of paper cutting and stitching mac- hines, repair of old books and docu- ments, mounting, pasting, wrapping etc.		Not applicable	One year	By direct recruitment	Not applicable	Not applicable
					<i>Desirable :</i> Primary School Standard.						
8. Jamadar	1	General Rs. 75—1—85— Central EB—2—95. Service Class IV Non-gazetted.	Non- Selec- tion post.	Not appli- cable.	Not applicable.		Not applicable	One year	By Promotion	By promo- tion of peons with five years service in the grade.	Class IV D.P.C.

9. Cleaner	33 General Rs. 75—1—85— Central EB—2—95 Service Class IV Non- gazetted.	Not appli- cable	Below 30 years	<i>Essential :</i> Experience in main- tenance of motor vehicles. <i>Desirable :</i> Middle School pass.	Not applicable	One year	By direct recruitment	Not applicable	Not applicable
10. Helper	80 General Rs. 75—1—85— Central EB—2—95 Service Class IV Non- gazetted	Not appli- cable.	Below 30 years	<i>Essential :</i> Experience in work- shop for a period of not less than two years. <i>Desirable :</i> Middle School pass.	Not applicable	One year	By direct recruitment	Not applicable	Not applicable
11. Mali	2 General Rs. 70—1—80— Central EB—1—85 Service Class IV Non- gazetted	Not appli- cable	Below 30 years	<i>Essential :</i> Experience in main- tenance of gardens or nurseries for a period of not less than two years. <i>Desirable :</i> Primary School standard	Not applicable	One year	By direct recruitment	Not applicable	Not applicable

[No. F. 4/49/67-SSI (C)]

K.S.R. MURTHI, Under Secy.

(Department of Industrial Development)

New Delhi, the 15th May 1968

S.O. 1796/RLIUR/18.—In pursuance of rule 18 of the Registration and Licensing of Industrial Undertakings Rules, 1952, the Central Government hereby appoints Shri Shyamnandan Mishra, M.P. to be member till the 3rd November, 1969, of the Reviewing Sub-Committee of the Central Advisory Council of Industries constituted by the Order of the Government of India in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) No. 276/RLIUR/18/1 dated the 8th January, 1968, and directs that the following amendment shall be made in the said Order, namely:—

In the said Order, against Serial No. 10 of list of members, the following name shall be added, namely:—

"10. Shri Shyamnandan Mishra, M.P., 24, Dr. Rajendra Prasad Road, New Delhi-1.
Member.

[No. 11(3)/Lic.Pol./67.]

ORDER

New Delhi, the 15th May 1968

S.O. 1797/RLIUR/18.—In pursuance of rule 18 of the Registration and Licensing of Industrial Undertakings Rules, 1952, and in partial modification of the Order of the Government of India in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) No. 276/RLIUR/18/1 dated the 8th January, 1968, the Central Government hereby appoints Shri G. M. Modi and Shri N. M. Wagle to be members of the Reviewing Sub-Committee of the Central Advisory Council of Industries till the 3rd November, 1969, in place of Shri L. N. Birla and Shri C. A. Pitts respectively.

[No. 11(3) Lic.Pol/67.]

R. C. SETHI, Under Secy.

(Department of Industrial Development)

ORDER

New Delhi, the 16th May 1968

S.O. 1798.—In exercise of the powers conferred by section 18G of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby makes the following Order to further amend the Scooters (Distribution and Sale) Control Order, 1960 namely:—

1. This order may be called the Scooters (Distribution and Sale) Control (Amendment) Order, 1968.

2. In clause 2 of the Scooters (Distribution and Sale) Control Order, 1960, for sub-clause (d), the following sub-clause shall be substituted, namely:—

"(d) "Scooter" means a Scooter of any description, manufactured or assembled in India, or manufactured in India from components imported into India, or manufactured in India or partly imported and partly manufactured in India, and includes every such description of Scooter, whether called a Scooterette, a Moped, an Auto-cycle or by any other name".

[No. 5(19)/67-A.E.Ind.(I).]

R. V. SUBRAHMANYAN, Jt. Secy.

(Department of Industrial Development)

ORDER

New Delhi, the 16th May 1968

S.O. 1799.—IDRA/6/16.—In exercise of the powers conferred by Section 6 of the Industries (Development and Regulation) Act 1951 (65 of 1951) read with Rules 5(1) and 8 of the Development Councils (Procedural) Rules, 1952, the Central

Government hereby appoints till the 15th April, 1970, S/s. A. H. Tobaccowala of M/s. Tata Engineering & Locomotive Co. Ltd., Bombay, and Bharat G. Doshi of M/s. Premier Automobiles Ltd., Bombay, in places of S/s. S. Moolgaokar of M/s. Tata Engineering & Locomotive Co. Ltd., Bombay and Lalchand Hirachand of M/s. Premier Automobiles Ltd., Bombay, respectively, to be members of the Development Council established by Order of the Government of India in the Ministry of Industrial Development and Company Affairs No. S.O. 1465, dated the 16th April, 1968 for the scheduled industries engaged in the manufacture or production of Automobiles, Automobile Ancillary Industries, Transport Vehicle Industries, Tractors and Earth Moving Equipment and Internal Combustion Engines and directs that following amendments shall be made in the said order, namely:—

In the said Order:—

- (i) for the name "Shri S. Moolgaokar" in entry No. 3, the name "Shri A. H. Tobaccowala" shall be substituted.
- (ii) for the name "Shri Lalchand Hirachand" in entry No. 4, the name "Shri Bharat G. Doshi" shall be substituted.

[No. 1(80)/67-A.E.Ind.(I).]

S. R. KAPUR, Under Secy.

(Department of Company Affairs)

COST AND WORKS ACCOUNTANTS

New Delhi, the 16th May 1968

S.O. 1800.—In pursuance of clause (b) of Regulation 20 of the Cost and Works Accountants Regulations, 1959, the Central Government hereby makes the following further amendment in the notification of the Government of India in the late Ministry of Commerce and Industry (Department of Company Law Administration) No. S.R.O. 2118, dated the 19th September, 1959, namely:—

In the said notification, in place of item 28, the following item shall be substituted, namely:—

"A diploma in Engineering (Civil, Electrical and Mechanical) awarded by the State Council for Engineering and Technical Education, West Bengal."

[No. F. 10/16/67-IGC.]

P. B. SAHARYA, Under Secy.

(Department of Industrial Development)

(Indian Standards Institution)

New Delhi, the 10th May 1968

S.O. 1801.—In pursuance of sub-regulation (1) of Regulation 5 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the Indian Standard, particulars of which are mentioned in the Schedule given hereafter, has been cancelled:

THE SCHEDULE

Sl. No.	No. and Title of the Indian Standard Cancelled	No. and Date of Gazette Notification in which Establishment of the Indian Standard was Notified
1.	IS : 1025—1957 Glossary of terms for primary cells and batteries	S. O. 137 dated 17th February 1958 published in the Gazette of India, Part II, Section 3 dated 1 March 1958.

[No. CMD/13:7.]

S. O. 1802.—In the Ministry of Industrial Development and Company Affairs (Indian Standards Institution) Notifications published in the Gazettes of India Part II, Section 3 Sub-Section (ii), the following corrections be made:

ERRATA

1. *Gazette dated 3 February 1968*
 - (a) S. O. 454 dated 19 January 1968, Schedule—
Sl. No. 3, col. 3, line 2—*Read 'Ghugudanga' for 'Chugudanga'.*
 - (b) S. O. 467 dated 23 January 1968, Schedule—
Sl. No. 132, col. 2—*Read 'IS: 4209-1966' For 'IS: 4209-1967'.*
2. *Gazette dated 10 February, 1968*
 - (a) S. O. 520 dated 25 January 1968, Schedule—
 - (i) Sl No. 4, col 4, line 3—*Read 'mild' For 'mld'.*
 - (ii) Sl No. 5, col 4, line 19—*Read 'No' For 'O'.*
 - (iii) Page 548,—In the third and fourth lines from [bottom insert 'ringhee' and 'Bombay Mutual' respectively for the missing matter.
 - (b) S.O. 521 dated 25 January 1968, Schedule—
Sl No. 4, col 5, (i)—*Read '6.1.3' For '6.13'.*
3. *Gazette dated 17 February, 1968*
 - S.O. 606 dated 6 February 1968, Schedule—
 - (i) Sl No. 1, col 3, line 2—*Read '1966' For '1968'*
 - (ii) Sl No. 5, col—5, lines 2 and 3—*Substitute '(X+o.6R) and (\bar{X} +o.6R)' for the existing matter between the words 'substitute' and 'for'.*
 - (iii) Sl No. 6, col 5, line 2—*Substitute—'(\bar{X} +KR)' For '(X+KR)'*
4. *Gazette dated 24 February, 1968*
 - (a) S.O. 683 dated 7 February 1968, Schedule—
 - (i) Sl No. 27, col 4, line 3—*Read 'routine' For 'rouliné'*
 - (ii) Sl No. 38, col 4, line 5—*Read 'packaging' for 'packing'.*
 - (b) S.O. 684 dated 9 February 1968, Schedule—
Sl No. 15, col 5, line 1—*Read 'Racmann' For 'Ramchann'.*
5. *Gazette dated 2 March 1968*
 - S.O. 805 dated 20 February 1968, Schedule—
Sl. No. 6, col 5, line 3—*Read '10 μ F for 10nF' For '10 μ F for 10uF'*
6. *Gazette dated 16 March, 1968*
 - (a) S.O. 951 dated 27 February 1968, Schedule—
Sl No. 4, col 4, line 1—*Read 'IS: 58-1950' For 'IS: 158-1950'*
 - (b) S.O. 953 dated 5 March 1968, Schedule, col 2—
Substitute the following for the existing design of the Standard Mark:

IS: 3055



7. *Gazette dated 30 March, 1968*
 - (a) S.O. 1195 dated 8 March 1968, Schedule—
Sl No. 8, col 7, line 2—*Add 'concentrates' after the word 'emulsifiable'*
 - (b) S.O. 1196 dated 13 March, 1968, Schedule—
Sl. No. 1, col 4, line 1—*Read 'an' For 'our'*

New Delhi, the 14th May 1968

S.O. 1863.—In pursuance of the provisions of sub-rule (2) of Rule 3 of the Indian Standard Institution (Certification Marks), Rules, 1955, the Indian Standards Institution hereby notifies that the Indian Standards, particulars of which are given in the schedule thereto annexed have been established during the quarter ending 31 March, 1968:

THE SCHEDULE

Sl. No. (1)	No. of Indian Standard (2)	Title of Indian Standard (3)
1	IS:50-1967	Specification for lead and scarlet chrome (<i>second revision</i>).
2	IS:75-1967	Specification for linseed oil, raw and refined (<i>first revision</i>).
3	IS:293-1967	Specification for seaworthy packaging of cotton cloth and yarn (<i>second revision</i>).
4	IS:517-1967	Specification for methanol (methyl alcohol) (<i>first revision</i>).
5	IS:720-1967	Specification for grease, s. hard, loco (<i>first revision</i>).
6	IS:780-1967	Specification for sluice valves for water works purposes (<i>third revision</i>).
7	IS:781-1967	Specification for sand-cast brass screw-down bib-taps and stop taps for water services (<i>first revision</i>).
8	IS:797-1967	Specification for common salt for chemical industries (<i>first revision</i>).
9	IS:806-1968	Code of practice for use of steel tubes in general building construction (<i>first revision</i>).
10	IS:826-1967	Specification for ammonium sulphate, fertilizer grade (<i>first revision</i>).
11	IS:934-1967	Specification for portable chemical fire extinguisher, soda acid type (<i>first revision</i>).
12	IS:957-1967	Specification for control van for fire brigade use.
13	IS:962-1967	Code of practice for architectural and building drawings (<i>first revision</i>).
14	IS:1200 (Part VIII)-1967	Method of measurement of building and civil engineering works Part VIII steel work and iron work (<i>second revision</i>).
15	IS:1255-1967	Code of practice for installation and maintenance of paper-insulated power cables (up to and including 33 kv) (<i>first revision</i>).
16	IS:1278-1967	Specification for filler rods and wires for gas welding (<i>first revision</i>).
17	IS:1286-1967	Pictorial markings for handling of goods in general (<i>first revision</i>).
18	IS:1293-1967	Specification for three-pin plugs and socket-outlets (<i>first revision</i>).
19	IS:1312-1967	Specification for methyl bromide (<i>first revision</i>).
20	IS:1358-1967	Practice for layout of library catalogue code (<i>first revision</i>).
21	IS:1373-1967	Specification for tinned mild steel milk cans (<i>second revision</i>).
22	IS:1448	Methods of test for petroleum products [No. P:2, P:3, P:8, P:23, P:37, P:38 & P:39-1967]
23	IS:1462-1967	Specification for talc for cosmetic industry (<i>first revision</i>).
24	IS:1534 (Part I)-1967	Specification for ballasts for fluorescent lamps Part I for switch start circuits (<i>first revision</i>).
25	IS:1597 (Part I)-1967	Code of practice for construction of stone masonry Part I rubble stone masonry
26	IS:1597 (Part II)-1967	Code of practice for construction of stone masonry Part II ashlar masonry
27	IS:1604-1967	Specification for aviation gasoline (<i>first revision</i>).
28	IS:1672-1967	Specification for floating dairy thermometers (<i>first revision</i>).
29	IS:1752-1967	Specification for coal dust for use in cast iron foundry (<i>first revision</i>).

(1)	(2)	(3)
30	IS:1785 (Part II)-1967	Specification for plain hard-drawn steel wire for prestressed concrete Part II As-drawn wire.
31	IS:1862-1967	Specification for studs (<i>first revision</i>)
32	IS:1885(Part XV)-1967	Electrotechnical vocabulary Part XV primary cells and batteries
33	IS:1885(Part XVI/Sec 3)-1967	Electrotechnical vocabulary Part XVI lighting Section 3 lamps and auxiliary apparatus.
34	IS:1885(Part XVIII)-1967	Electrotechnical Vocabulary Part XVIII General terms on radio-communications
35	IS:1885(Part XIX)-1967	Electrotechnical vocabulary Part XIX radio-communication circuits.
36	IS:1885(Part XX)-1967	Electrotechnical vocabulary Part XX radio-wave propagation
37	IS:1885(Part XXI)-1967	Electrotechnical vocabulary Part XXI aerials
38	IS:1885 (Part XXII)-1967	Electrotechnical vocabulary Part XXII equipments, for radio-communications, transmitting and receiving
39	IS:1885 (Part XXIV)-1967	Electrotechnical vocabulary Part XXIV Broadcasting, sound and television
40	IS:1893-1966	Criteria for earthquake resistant design of structures (<i>first revision</i>)
41	IS:1958-1967	Specification for fabricated nickel anodes for electroplating (<i>first revision</i>)
42	IS:2016-1967	Specification for plain washers (<i>first revision</i>)
43	IS:2312-1967	Specification for propeller type ac ventilating fans (<i>first revision</i>)
44	IS:2395 (Part II)-1967	Code of practice for painting concrete, masonry and plaster surfaces Part II schedules
45	IS:2597-(Part II)-1967	Code of practice for the use of electronic valves Part II special quality receiving valves
46	IS:2770 (Part I)-1967	Methods of testing bond in reinforced concrete Part I pull out test
47	IS:3148-1967	Specification for metallic slide fasteners (<i>first revision</i>)
48	IS:3182-1967	Specification for broken brick (burnt clay) fine aggregate for use in lime mortar
49	IS:3370(Part III)-1967	Code of practice for concrete structures for the storage of liquids Part III prestressed concrete structures
50	IS:3413-1964	Specification for base paper for carbon paper
50(a)	IS:3476-1967	Specification for trolley and contact wire for electric tractions
51	IS:3611-1967	Method of sampling of tea packed in containers
52	IS:3615-1967	Glossary of terms used in refrigeration and air conditioning
53	IS:3679E-1966	Specification for ready mixed paint, stoving, red oxide-barium chromate/barium potassium chromate primer
54	IS:3722-1966	Letter symbols and signs used in electrical technology
55	IS:3803-1967	Method for elongation conversions for steel
56	IS:3814-1967	Specification for metal arc welded short link, uncalibrated steel chain, grade 30, for lifting purposes
57	IS:3842 (Part I)-1967	Application guide for electrical relays for ac systems Part I overcurrent relays for feeders and transformers
58	IS:3890 (Part II)-1967	Specification for instruments, plastic, filling, dental Part II designation numbers, 12, 20, 21, 46, 47, 153 and 183.
59	IS:3896-1966	Comparison of Indian and overseas standards for iron castings
60	IS:3962-1967	Specification for waxed paper for general packaging
61	IS:3983-1966	Specification for goatskin parchment for orthopaedic purposes

(1)	(2)	(3)
62	IS:4015(Part II)-1967 .	Guide for handling cases of pesticide poisoning Part II symptoms, diagnosis and treatment
63	IS:4016-1966 . .	Density-composition tables for aqueous solutions of sodium hydroxide
64	IS:4074-1967 . .	Grading for monsooned coffee
65	IS:4077-1966 . .	Specification for copper-nickel shot
66	IS:4081-1967 . .	Safety code for blasting and related drilling operations
67	IS:4093-1967 . .	Specification for non-refillable liquefied petroleum gas containers
68	IS:4100-1967 . .	Specification for gin
69	IS:4132-1967 . .	Method for calibration of standardized blocks to be used for brinell hardness testing machines
70	IS:4133-1967 . .	Methods for calibration of standardized blocks to be used for vickers hardness testing machines
71	IS:4135-1967 . .	Specification for hospital rubber sheetings
72	IS:4136-1967 . .	Specification for aluminium compartmental trays
73	IS:4138-1967 . .	Safety code for working in compressed air
74	IS:4184-1967 . .	Specification for steel wheelbarrows (with two wheels)
75	IS:4198-1967 . .	Specification for emulsion spraying machines for roads
76	IS: 4211-1967 . .	Specification for thread pitch gauges for ISO metric screw threads (pitch range 0.25 to 6.00 mm).
77	IS:4218 Part IV)-1967 .	ISO Metric screw threads Part IV tolerancing system
78	IS:4218 (Part VI)-1967 .	ISO metric screw threads Part VI limits of sizes for commercial bolts and nuts (diameter range 1 to 39 mm).
79	IS:4240-1967 . .	Glossary of conveyor terms and definitions.
80	IS:4258-1967 . .	Hardness conversion tables for metals.
81	IS:4274-1967 . .	Specification for buckles.
82	IS:4281-1967 . .	Specification for scissors, McIndoe's, for plastic surgery
83	IS:4288-1967 . .	Specification for PVC-insulated and PVC-sheathed solid aluminium conducted cables of voltage rating not exceeding 1100 volts.
84	IS:4301-1967 . .	Specification for brushes, foundry flat
85	IS:4304-1967 . .	Specification for tuna canned in oil.
86	IS:4308-1967 . .	Specification for dry powder for fire fighting.
87	IS:4309-1967 . .	Methods of measurement on direct reading pH meters.
88	IS:4311-1967 . .	Methods for the determination of mineral matter in coal.
89	IS:4312-1967 . .	Code of safety for lead and its compounds.
90	IS:4313-1967 . .	Specification for pliers, plate, dental.
91	IS:4314-1967 . .	Specification for pliers, cone socket, dental.
92	IS:4317 (Part I)-1967 .	Specification for aluminium electrolytic capacitors Part I general requirements and tests.
93	IS:4319-1967 . .	Specification for pliers, stretching and contouring, dental.
94	IS:4320-1967 . .	Specification for thiram, technical.
95	IS:4321-1967 . .	Specification for 2, 4-D, technical.
96	IS:4322-1967 . .	Specification for endosulfan dusting powders.
97	IS:4323-1967 . .	Specification for endosulfan emulsifiable concentrates.
98	IS:4324-1967 . .	Specification for endosulfan water dispersible powder concentrates.
99	IS:4325-1967 . .	Specification for binapaeryl emulsifiable concentrates.
100	IS:4326-1967 . .	Code of practice for earthquake resistant construction of buildings.
101	IS:4328-1967 . .	Specification for monocular dissecting microscope.
102	IS:4329-1967 . .	Specification for measuring (travelling) microscope.
103	IS:4330-1967 . .	Methods of measurements on cathode-ray oscilloscope (dc to 10 Mc/s).
104	IS:4332 (Part I)-1967 .	Methods of test for stabilised soils Part I method of sampling and preparation of stabilized soils for testing.
105	IS:4332 (Part II)-1967 .	Methods of test for stabilized soils Part II determination of moisture content of stabilized soil mixtures.

(1)	(2)	(3)
105	IS:4332 (Part III)-1967	Methods of test for stabilized soils Part III test for determination of moisture content-dry density relation for stabilized soil mixtures.
107	IS:4333 (Part I)-1967	Methods of analysis for foodgrains Part I retractions.
108	IS:4333 (Part II)-1967	Methods of analysis for foodgrains Part II moisture.
109	IS:4333 (Part III)-1967	Methods of analysis for foodgrains Part III determination of hectolitre weight.
110	IS:4334-1967	Specification for O-chloroaniline.
111	IS:4335-1967	Specification for m-chloroaniline.
112	IS:4336-1967	Specification for P-chloroaniline.
113	IS:4337-1967	Specification for gooseneck and derrick heel fittings.
114	IS:4338-1967	Specification for vertical oscillating shutters for sewing machines for household purposes.
115	IS:4339-1967	Specification for needle bar link studs for sewing machines for household purposes.
116	IS:4340-1967	Specification for needle bar links for sewing machine for household purposes.
117	IS:4341-1967	Specification for feed holder roller for sewing machine for household purposes.
118	IS:4342-1967	Specification for square slider for oscillating rock shaft for sewing machines for household purposes.
119	IS:4343-1967	Code of practice for treatment of water for high pressure boilers.
120	IS:4344-1967	Specification for endosulfan, technical.
121	IS:4345-1967	Specification for binapacryl, technical.
122	IS:4346-1967	Specification for washers for water taps for cold water services.
123	IS:4347-1967	Code of practice for hospital lighting.
124	IS:4348-1967	Method of test for determination of permeability of natural building stones.
125	IS:4349-1967	Specification for precision rollers.
126	IS:4350-1967	Specification for concrete porous pipes for under drainage.
127	IS:4351-1967	Specification for steel door frames.
128	IS:4352-1967	Specification for pork luncheon meat, canned.
129	IS:4354 (Part I)-1967	Methods of chemical analysis of magnesium-aluminium brazing alloys.
		Part I analysis of aluminium, manganese, zinc and silicon.
130	IS:4355-1967	Specification for fire-resistant brattice cloth.
131	IS:4356-1967	Specification for paper cuttings.
132	IS:4357-1967	Methods of stability testing of fork lift trucks.
133	IS:4358-1967	Specification for sickles.
134	IS:4360-1967	Method for determination of strength of fast bases.
135	IS:4361-1967	Specification for sunn hemp drugget.
136	IS:4362-1967	Recommendation for lighting of number plates for automobiles.
137	IS:4363-1967	Specification for drip counter.
138	IS:4364-1967	Specification for pipettes, serological.
139	IS:4366-1967	Specification for agricultural tillage discs.
140	IS:4368-1967	Specification for alloy steel billets, blooms and slabs for forgings for general engineering purposes.
141	IS:4369-1967	Specification for carbon steel bars for forgings.
142	IS:4370-1967	Code of practice for the use of lighting and signalling devices on cars and commercial vehicles.
143	IS:4371-1967	Specification for kamblies, wool khadi, loomstate.
144	IS:4372-1967	Specification for cloth, twill, dyed, wool khadi.
145	IS:4373-1967	Specification for hydraulically operated stop light switches for automobiles.
146	IS:4374-1967	Specification for mild steel fabricated verticle bollards with and without lugs.
147	IS:4375-1967	Specification for cotton knitted sports shirts.
148	IS:4376-1967	Specification for plain-knitted gents' cotton short drawers.

(1)	(2)	(3)
149	IS:4377-1967	General requirements for magnetic tapes for sound recording and reproduction.
150	IS:4378-1967	Specification for nippers.
151	IS:4379-1967	Specification for identification of the contents of industrial gas cylinders.
152	IS:4381-1967	Specification for pathological microscope.
153	IS:4382-1967	Specification for non-tinned ophthalmic glass.
154	IS:4383-1967	Specification for pilot ladders.
155	IS:4384-1967	Specification for steel watertight and weathertight.
156	IS:4385-1967	Specification for throwing hammers.
157	IS:4386-1967	Specification for putting shots.
158	IS:4388-1967	Specification for cotton fabrics for reinforcement of rubber hoses.
159	IS:4389-1967	Method for determination of colour fastness of textile materials to hot water.
160	IS:4390-1967	Method for determination of ether-soluble matter in textile materials.
161	IS:4391-1967	Specification for hand-made sunn hemp pile carpets.
162	IS:4395-1967	Glossary of terms relating to ink and allied industries.
163	IS:4395-1967	Specification for barium nitrate for explosive and pyrotechnic compositions.
164	IS:4399-1967	Specification for nylon fabrics for industrial and special purposes.
165	IS:4400 (Part I)-1962	Methods of measurements on semiconductor devices Part I general.
166	IS:4401-1967	Specification for nylon fish-net twines.
167	IS:4402-1967	Glossary of terms relating to nerring for fishing-basic terms.
168	IS:4404-1967	Specification for cloves, whole.
169	IS:4405-1967	Specification for cloves, powder.
170	IS:4407-1967	Code of practice for reed walling.
171	IS:4408-1967	Specification for sodium chloride, analytical reagent.
172	IS:4412-1967	Specification for copper wires for general engineering purposes.
173	IS:4413-1967	Specification for brass wires for general engineering purposes.
174	IS:4414-1967	Specification for wooden tables tops.
175	IS:4415-1967	Glossary of terms of wooden furniture.
176	IS:4416-1967	Specification for dobby barrels.
177	IS:4421-1967	Specification for malted skimmed milk food.
178	IS:4426-1967	Methods of sampling laboratory glassware and medical glass instruments.
179	IS:4436-1967	Specification for jute bagging for wrapping cotton bales.
180	IS:4444-1967	Specification for bottles, bacteriological.
181	IS:4445-1967	Specification for filter and filter chamber for blood transfusion.
182	IS:4450-1967	Specification for brandies.
183	IS:4452-1967	Specification for dehydrated onion.
184	IS:4455-1967	Specification for trolleys, soiled linen.
185	IS:4456 (Part II)-1976	Methods of test for chemical resistant mortars Part II sulphur type.
186	IS:4458-1967	Specification for screens, bedside.
187	IS:4468-1967	Dimensions for three-point linkage of agricultural wheeled tractors.

[No. CMD/13:3]

(Dr.) A. N. GHOSH,
Director General.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 3rd May 1968

S.O. 1804.—In pursuance of section 36 of the Employees' State Insurance Act, 1948 (34 of 1948), the audited accounts of the Employees' State Insurance Corporation for the year 1965-66 are hereby published for general information.

EMPLOYEES' STATE INSURANCE CORPORATION
Income and Expenditure Account for the Year ended 31st March, 1966

INCOME**EXPENDITURE**

Previous year (1964-65)	Head of Account	Amount	Total	Previous Year (1964-65)	Head of Account	Amount	Total
		Rs.	Rs.			Rs.	Rs.
	By Contributions :				I. Benefits to insured persons and their families :		
9,96,74,412	Employer's Share only .	11,67,12,836			A. Medical Benefits.		
8,87,93,177	Employee's Share only .	10,39,69,964	22,06,82,800		(i) Payments to State Govt. etc. as Corporations' share of their expenses on providing medical treatment & maternity facilities etc.	9,21,89,254	
18,84,67,589					(ii) Medical treatment and care and maternity facilities (expenses incurred direct by the Corporation Total Expenditure)	36,85,782	
	State Govt. share towards medical benefits initially incurred by the Corporation	2,74,699	2,74,699	6,96,84,320			
	Other Heads of Revenue			34,88,362	Total A—Medical Benefits.		9,58,75,036
	Grant-in-aid, Donations and Gifts.			7,31,72,682			
72,95,756	Interest & Dividends .	93,95,958			B-Cash Benefits.		
1,05,602	Compensations. .	1,15,615		4,30,83,641	1. Sickness Benefits. .	6,04,20,850	
25,282	Rents, Rates & Taxes .	2,22,796		33,28,102	2. Extended Sickness Benefits	47,19,595	
				24,24,141	3. Maternity Benefits .	33,71,412	
3,439	Fees, Fines & Forfeitures .	6,304		51,63,079	4. Temporary Disablement Benefits.	66,65,880	
2,00,062	Miscellaneous . .	2,29,878	99,70,551	73,04,700	5. Permanent Disablement Benefits (Capitalised Value)	1,07,35,850	
76,30,141				22,77,000	6. Dependents Benefits (Capitalised Value)	23,17,000	
				6,35,80,663	Total Cash Benefits		8,82,30,587
					C. Other Benefits.		
					(a) Expenditure on the Rehabilitation of disabled persons.	30,008	
				20,072			

96,496	(b) Medical Boards and Appeal Tribunals.	1,30,296	
	(c) Payments to I.Ps. on a/c. of conveyance charges and/or loss of wages.	50,070	
34,115	(d) Grant-in-aid	6,221	
1,600	(e) Miscellaneous	1,13,486	
87,965			
2,40,248	Total C—Other Benefits		3,30,081
13,69,93,593	Total Benefits to insured persons and their families .		18,44,35,704
2. Administration Expenses			
A-Superintendence			
	(1) Corporation, Standing Committee Regional Boards, etc.	24,109	
26,902	(2) Principal Officers.	2,00,181	
2,01,042	(3) Other Officers.	16,56,069	
13,10,319	(4) Ministerial Establishment.	53,72,261	
43,44,182	(5) Class IV Servants.	10,70,665	
8,55,167	(6) Contingencies.	22,80,028	
28,48,203	Total A—Superintendence.		1,06,03,313
95,85,315			
B-Field Work			
2,64,115	(1) Officers.	3,45,538	
52,94,389	(2) Ministerial Establishment.	66,09,124	
9,14,476	(3) Class IV Servants.	11,94,332	
9,29,568	(4) Contingencies.	12,79,192	
74,02,548	Total B-Field Work.		94,28,236
	C-Other Charges.		
99,171	(1) Legal Charges.	96,149	
11,205	(2) Insurance Courts.	72,823	
4,896	(3) Publicity & Advertisement.	7,918	
7,202	(4) Charges for maintaining of Banking Account.	8,980	

Previous year (1964-65)	Head of Account	Amount	Total	Previous year (1964-65)	Total	Head of account	Amount	Total	Total
Rs.		Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
				58,595		(5) Audit Fees.	58,815		
				1,90,102		(6) Depreciation of Office Buildings/Dispensaries/ Equipments/Staff Cars etc.	4,15,479		
				44,530		(7) Repairs, Maintenance of office buildings owned by the Corporation.	2,04,366		
				3,64,186		(8) Repairs & Maintenance of Hospital Buildings, owned by the Corpn.	7,06,212		
				2,61,700		(9) Pension Reserve Fund for the Employees of the Corporation.	2,95,000		
				5,00,000		(10) Corporations, Contri- bution to ESI Corpn. Provident Fund.	1,46,002		
				3,12,726		(11) Interest paid to the ESI Corpn. Provident Fund	2,76,200		
				(—) 79,187		(12) Less interest & gain realised on investment. (—)	65,875		
				74		(13) Miscellaneous.	..		
				—		(14) Losses.	..		
						Total C—Other Charges.		22,22,069	
					17,75,205				
					1,87,63,568	Total—Administration— Expenses			2,22,53,618
					15,57,57,161	Total Expenditure on Re- venue Account.			20,66,80,322
					4,03,40,569	To excess of income over expenditure carried over to Balance Sheet.			2,42,38,728
19,60,97,730	Grand Total		23,09,28,050		19,60,97,730				23,09,28,050

New Delhi,
dated the 30th May, 1966.

Sd/- T. P. KHOSALA,
Chief Accounts Officer,
Employees' State Insurance Corporation.

EMPLOYEES STATE INSURANCE CORPORATION

Balance Sheet as on 31st March, 1966.

Previous Year (1954-55)	Liabilities	Amount	Total	Previous year (1964-65)	Assets	Amount	Total
Rs.		Rs.	Rs.	Rs.		Rs.	Rs.
	<i>Balance of Excess of Income</i>				<i>Lands and Buildings (Wholly owned by the Corporation).</i>		
	<i>Over Expenditure</i>				<i>(a) Buildings for Offices of the Corporation (including staff quarters).</i>		
27,45,77,317	As per last balance sheet .	31,50,17,886			As per last balance sheet .	14,13,572	
4,03,42,559	Accumulation during the year	2,42,38,728	33,92,56,614		Additions during the year .	52,26,734	
31,50,17,886				14,12,896			
	(1) <i>Permanent (Partial and total)</i>			676			
	<i>Disablement Reserve Fund.</i>			14,13,572		66,40,306	
2,52,39,818	As per last Balance Sheet .	2,87,17,144			<i>(b) Hospitals and Dispensaries</i>		
73,04,700	Provision made during the year	1,07,35,850			As per last balance sheet .	3,60,67,032	
11,17,615	Interest received from invests	13,45,079		1,03,83,371	Additions during the year .	2,30,27,442	
3,36,62,133		4,07,98,073		2,56,83,661			
49,44,939	Less payments made during the year	57,72,311	3,50,25,762	3,60,67,032		5,90,94,474	6,57,34,780
2,87,17,144							
	(2) <i>Dependents' Benefit Reserve Fund.</i>				<i>Lands and Buildings (Jointly owned by the Corporation and State Govts. (Corporation's share).</i>		
95,03,539	As per last Balance sheet .	1,13,90,448			<i>(a) Hospitals and Dispensaries</i>		
22,77,000	Provision made during the year	23,17,000			As per last balance sheet .	3,31,023	
4,34,277	Interest received from invests	5,34,702		2,97,483	Additions during the year .	74,308	
1,22,19,816		1,42,42,150		33,540			
				3,31,023		4,05,331	

Previous year (1964-65)	Liabilities	Amount	Total	Previous year (1964-65)	Assets	Amount	Total
Rs.		Rs.	Rs.	Rs.		Rs.	Rs.
8,29,368	Less payments made during the year . . .	9,71,132	1,32,71,018				
1,13,90,448							
	(3) <i>Employee's State Insurance Corporation Provident Fund.</i>				(b) <i>Equipments for Hospitals etc.</i>		
74,01,992	As per last balance sheet . . .	89,06,275		49,680	As per last balance sheet . . .	49,680	
12,12,905	Add Amount credited during yr.	14,25,912		..	Additions during the year	
5,00,000	Employee's Contributions	1,46,002		49,680		49,680	4,55,011
3,12,726	Corporation Contribution						
	Interest on Employees' & Corporation Shares	2,76,200		3,80,703	<i>Suspense (Advance for Construction of Hospitals, their equipments, Office Bldg.,</i>		
94,27,623		1,07,54,389		7,58,64,318	As per last balance sheet . . .	8,73,64,435	
5,21,348	Less payments made during the year . . .	9,88,138		3,72,52,786	Add Payments made during the year . . .	3,58,79,606	
99,06,275		97,66,251		11,31,17,104		12,32,44,041	
	(Less: Amount transferred to Pension Reserve fund)	—26,36,024		2,57,52,669	Less Adjustments & Recoveries . . .	2,53,02,399	9,79,41,642
			71,30,227	8,73,64,435			
	(4) <i>Depreciation Reserve Fund of Buildings for the Offices of the Corporation (including staff quarters)</i>				<i>Staff Cars.</i>		
				84,089	As per last balance sheet . . .	84,149	
				60	Add Payments made during the year	84,149
				84,149			
1,56,384	As per last balance sheet . . .	1,81,169			<i>Permanent Advances to the Heads of Offices of the Corporation.</i>		
15,420	Provision made during the year	32,590	2,26,092	19,226	As per last balance sheet . . .	20,466	
9,365	Interest recd. from Invests . . .	12,333		1,539	Add Payments made during year . . .	1,561	
1,81,169						22,027	
	(5) <i>Depreciation Reserve Fund of equipment in Hospitals and Examination Centres.</i>			20,765			

22,978	As per last balance sheet	27,946	299	Less Recoveries made during year	211	21,816
4,968	Provision made during the year	4,968	20,466			
..	Interest recd. from invest.	1,094	34,008	Advance of pay on transfer to the Employees of the Corpn.		
27,946	(6) Depreciation Reserve Fund of Hospitals.					
1,72,608	As per last balance sheet	3,32,587	14,129	As per last balance sheet	7,608	
1,56,667	Provision made during the year	3,67,959	61,103	Add Payments made during the year	44,915	
3,318	Interest recd. from invests	13,549	75,232		52,523	
3,32,587	(7) Depreciation Reserve Fund of Staff Cars.		67,624	Less Recoveries made during the year	42,265	10,258
29,107	As per last balance sheet	42,154	7,608	Advance of T.A. on transfer to the Employees of the Corpn.		
13,047	Provision made during the year	9,962	17,563	As per last balance sheet	18,194	
..	Interest recd. from invests.	2,180	83,130	Add Payments made during the year	56,946	
42,154	(8) Repairs and Maintenance Reserve fund of buildings for the offices of the Corporation.		54,296		75,140	
				Less Recoveries made during the year	55,754	19,386
1,36,958	As per last balance sheet	1,81,442	1,21,316	Advance for purchase of conveyances to the Employees of the Corpn.		
44,530	Provision made during the year.	2,04,366	1,31,190	As per last balance sheet	1,41,831	
10,289	Interest recd. on investments	8,623	2,52,506	Add Payments during the year.	2,73,492	
1,91,777	Less Payments made during year	3,94,431	1,10,675	Less Recoveries made during year.	4,15,323	2,79,282
10,335		3,661	1,41,831		1,36,041	
1,81,442			3,90,770			

Previous Year (1954-65)	Liabilities	Amount	Total	Previous Year (1964-65)	Assets	Amount	Total
Rs.		Rs.	Rs.	Rs.		Rs.	Rs.
	(9) Repairs and Maintenance Reserve Fund Account of Hospitals.				<i>House Building Advance</i>		
				..	As per last balance sheet.	4,500	
				4,500	Add Payments made during year.	14,900	
				4,500		19,400	19,180
1,600	As per last balance sheet.	3,65,786		..	Less Recoveries made during year.	220	
3,64,186	Provision made during year	7,06,212		4,500			
..	Interest recd. on Investments.	12,842	10,84,840				
3,65,786					Miscellaneous Advances to the Employees' of the Corporation (Festival Advances)		
	(10) Pension Reserve Fund for the Employees of the Corporation.						
12,05,195	As per last balance sheet	14,99,975		78,763	As per last balance sheet.	81,117	
2,61,700	Provision made during yr.	2,95,000		2,40,407	Add Payments made during year.	2,95,825	
53,922	Interest recd. on investments.	65,025		3,19,170		3,76,942	
15,20,818		18,60,000		2,38,053	Less Recoveries made during year.	2,69,422	1,07,520
20,843	Less Payments made during year.	15,390		81,117			
14,99,975		18,44,610					
					<i>Advance payments on behalf of State Governments.</i>		
..	(Add : Amount transferred from ESIC Provident Fund).	26,36,024	44,80,634	1,134	As per last balance sheet.	1,166	
14,99,975				3,937	Add Payments made during year.	4,088	
				5,071		5,254	
				3,905	Less Recoveries made during year.	4,295	959
				1,166			

<i>Deposits of Securities e.g. Contractors.</i>			<i>Advance to the Reserve Bank of India for the purchase of Securities.</i>		
1,06,849	As per last balance sheet,	1,11,935		As per last balance sheet,	..
1,09,017	Add Deposits—during the year.	87,607		Add Payments made during Year.	1,32,696
2,15,866		1,99,542	53,70,780		1,32,696
1,03,931	Less Deposits repaid during the Year.	1,17,141	53,70,780		..
1,11,935			53,70,780	Less Adjustments made during year	1,32,696
	<i>Deductions from bills payable to other parties.</i>		..		
16,585	As per last balance sheet,	12,796		<i>Miscellaneous Advances.</i>	
2,26,443	Add Amount credited during the year.	2,91,008	2,47,620	As per last balance sheet,	3,16,639
2,43,028		3,03,804	1,54,914	Add Payments made during year.	3,67,603
2,30,232	Less Payments made during the year.	2,88,249	4,02,534		6,84,242
12,796			85,895	Less Receipts during the yr.	96,696
	<i>Unclaimed deposits in the Employees' State Insurance Corporation Provident Fund</i>		15,555		15,87,546
329	As per last balance sheet,	4,274		<i>Loans granted to State Governments.</i>	
4,043	Add Amount credited during the year.	2,219	26,16,546	As per last Balance Sheet,	49,75,546
4,372		6,493	23,59,000	Add Payments made during Year.	22,94,220
98	Less Payments made during the year.	..	49,75,546		72,69,766
4,274				<i>Remittances.</i>	
	<i>Miscellaneous Deposits</i>			<i>Cash Remittances.</i>	
12,000	As per last balance sheet,	84,115	6,493	4,94,800	(—)46,136
..	Less Deposits repaid during year.	33,178	29,44,68,306	Add Debits adjusted during year.	37,00,11,407
72,115	Add Deposits recd. during year.	..	29,49,63,106		36,99,65,271
84,115			29,50,09,242	Less credits adjusted during the year.	36,79,60,771
			(—)46,136		20,04,500
			50,937		

Previous Year (1964-65)	Liabilities	Amount	Total	Previous Year (1964-65)	Assets	Amount	Total
Rs.		Rs.	Rs.	Rs.		Rs.	Rs.
					<i>Other Remittances Exchange Accounts.</i>		
				..	As per last balance sheet.	..	
				3,97,95,353	Add Debits during the year.	4,89,69,120	
				3,97,95,353	Less Credits during the year.	4,89,44,571	
							24,549
					(1) <i>Permanent (Partial & Total Disablement Benefit Reserve Fund.</i>		
				2,52,30,252	As per last balance sheet.	2,86,96,746	
				35,48,700	Add Investments made during year.	31,54,000	
				2,87,78,952		3,18,50,746	
				82,206	Less Realisation on maturity or sale of investments.	..	3,18,50,746
				2,86,96,746			
					(2) <i>Dependants' Benefit Reserve Fund</i>		
				94,87,496	As per last balance sheet.	1,11,48,701	
				17,27,100	Add Investments made during year.	18,17,000	
				1,12,14,596		1,29,65,701	
				65,895	Less Realisation on maturity or sale of investments.		1,29,65,701
				1,11,48,701			
					(3) <i>B.S.I.C. Provident Fund.</i>		
				66,12,427	As per last balance sheet.	79,59,351	
				15,23,600	Add Investments made during year.	13,46,000	
				81,36,027		93,05,351	
				1,76,676	Less Realisation of maturity or sale of investments.	5,000	
						93,00,351	
						22,72,751	
				..	Less Amount transferred to Pension Reserve Fund.		70,27,600
				79,59,351			

(4) <i>Depreciation Reserve Fund of building for the offices of the Corporation.</i>		
1,38,353	As per last balance sheet.	1,80,808
<u>54,405</u>	Add Investments made during year.	<u>7,000</u>
1,92,758		1,87,808
<u>11,950</u>	Less Realisation on maturity or sale of investments.	<u>12,320</u>
<u>1,80,808</u>		1,75,488
(5) <i>Depreciation Reserve Fund of equipment in Hospitals and Examination Centres.</i>		
17,900	As per last balance sheet.	22,900
<u>5,000</u>	Add Investments made during the year.	<u>10,000</u>
22,900		32,900
<u>..</u>	Less Realisation on maturity or sale of investments.	<u>5,000</u>
<u>22,900</u>		27,900
(6) <i>Depreciation Reserve Fund of Hospitals.</i>		
44,500	As per last balance sheet.	1,72,500
<u>1,28,000</u>	Add Investments made during year.	<u>1,63,000</u>
<u>1,72,500</u>		3,35,500
(7) <i>Depreciation Reserve Fund of Staff Cars.</i>		
17,000	As per last balance sheet.	29,000
<u>12,000</u>	Add Investments made during year.	<u>21,000</u>
29,000		50,000
<u>..</u>	Less Realisation on maturity or sale of investments.	<u>8,000</u>
<u>29,000</u>		42,000

Previous Year (1964-65)	Liabilities	Amount	Total	Previous Year (1964-65)	Assets	Amount	Total
Rs.		Rs.	Rs.	Rs.		Rs.	Rs.
					(8) <i>Repair and Maintenance Reserve Fund of buildings for the offices of the Corpn.</i>		
				1,06,402	As per last balance sheet	1,43,727	
				69,975	Add investments made during the year	38,000	
				1,76,377		1,81,727	
				32,650	Less Realisation on maturity or sale of investments	—	
				1,43,727			1,81,727
					(9) <i>Repairs & Maintenance Reserve Fund of Hospital Building</i>		
				—	As per last balance sheet	1,600	
				1,600	Add Investment made during the year	3,64,000	
				1,600			3,65,600
					(10) <i>Pension Reserve Fund for the Employee's of the Corporation.</i>		
				11,83,804	As per last balance sheet	12,04,804	
				21,000	Add Investment made during year	2,96,000	
				12,04,804		15,00,804	
				—	Add Amount transferred from ESIC Provident Fund	22,72,751	
				12,04,804			37,73,555
					<i>General Cash Balances</i>		
				17,13,09,740	Investment as per last balance sheet.	16,86,22,614	

		13,90,36,080	Add Investments made during the year	7,90,67,200	
		31,03,45,820		24,76,89,814	
		14,17,23,206	Less Realisation on maturity or sale of investments	9,47,00,419	
		16,86,22,614		15,29,89,395	
		3,94,131	Cash in hand	5,05,726	
		1,74,68,228	Cash with bankers	1,68,89,764	
		1,78,62,359		1,73,95,490	
		18,64,84,973	Total Cash Balance		17,03,84,885
36,68,75,932	GRAND TOTAL	40,18,23,742	36,68,75,932	GRAND TOTAL	40,18,23,742

NEW DELHI,

Dated the 30th May, 1966

AUDIT CERTIFICATE

Sd/- T. P. KHOSLA,
Chief Accounts Officer,
Employees' State Insurance Corpn.

I have examined the foregoing accounts and the Balance Sheet of the Employees' State Insurance Corporation and obtained all the information and explanations that I have required and subject to the observations in the Audit Report appended, I certify, as a result of my audit that in my opinion these accounts and the Balance Sheet are properly drawn up so as to exhibit a true and fair view of the state of affairs of the Employees' State Insurance Corporation according to the best of my information and explanations given to me and as shown by the books of the Employees' State Insurance Corporation.

[No. F. 4/7/67-HL]

Sd/- D. D. DHINGRA,
Accountant General, Central Revenues,
New Delhi.

New Delhi, the 14th May 1968

S.O. 1805.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs India Paper Trading Company, 146/2 Old China Bazar Street, Calcutta-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the 31st May, 1968.

[No. 8/70/68-PF.II.]

New Delhi, the 15th May 1968

S.O. 1806.—In pursuance of clause (b) of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby appoints the Assistant Secretary (Incharge Provident Fund) to the Government of West Bengal, Labour Department, as a member of the Regional Committee for the State of West Bengal vice Shri A. S. Nag, Deputy Secretary, and makes the following further amendment in the notification of the Government of India in the late Ministry of Labour No. S.R.O. 1278, dated the 20th June, 1953, namely:—

In the said notification against serial number (2), for the existing entry in the first column, the following entry shall be substituted, namely:—

"The Assistant Secretary to the Government of West Bengal, (Incharge Provident Fund), Labour Department, Calcutta."

[No. 12(6)64-PF.II.]

New Delhi, the 16th May 1968

S.O. 1807.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Dipti Sales and Agencies Limited, 56, Chowringhee Road, Calcutta-16 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st March, 1968.

[No. 8/68/68-PF.II.]

New Delhi, the 17th May 1968

S.O. 1808.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Capri Private Limited, 44, Regal Building, New Delhi-1 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st day of March, 1967.

[No. 8/191//67/PF. II.]

S.O. 1809.—In exercise of the powers conferred by Section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the Government Press, Rajkot and the Government Photo Litho Press, Ahmedabad, in implemented areas, hereby exempts the said factories from the payment of the employers' special contribution leviable under Chapter VA of the said Act upto and including the 30th June, 1968.

[No. F. 6/2/67/HI.]

S.O. 1810.—Whereas the Central Government was satisfied that:—

1. The Jayanti Ramchandrappa Setty Mills Limited;
2. Srinivasa Silk Twisting Factory;
3. Sri Venkateswara Swamy Twisting Factory Varalaxmi Road Rayadrug;
4. Sri Neelakanteswara Swamy Silk Twisting Factory;
5. Abhayankamar Silk Twisting Industries;

were situated in Rayadrug area which was a sparse area (that is, an area whose insurable population was less than 500) in the district of Anantapur in the State of Andhra Pradesh;

And, whereas by virtue of their location in a sparse area, the aforesaid factories were granted exemption from the payment of the employers' State Insurance Act, 1948 (34 of 1948) until the enforcement of the provisions of Chapter V of the Act in that area, by the Central Government in the Notification of the Government of India in the Ministry of Labour and Employment No. S.O. 2665 dated the 2nd November, 1961;

And, whereas the Central Government is satisfied that the insurable population of the Rayadrug area in the district of Anantapur in the State of Andhra Pradesh has now exceeded 500, and it is no longer a sparse area;

Now, therefore, in exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the said notification namely:—

In Schedule III appended to the said notification, in the entries relating to Serial No. 2, the entry "Rayadrug" in column 4 and the corresponding entries in column 5 shall be omitted.

[No. F. 6/31/68/HI/I.]

S.O. 1811.—Whereas the Central Government was satisfied that M/s Sri Laxmi Venkateswara Swami Silk Twisting Factory was situated in Rayadrug area which was a sparse area (that is an area whose insurable population was less than 500 in the district of Anantapur in the State of Andhra Pradesh;

And, whereas by virtue of its location in a sparse area, the aforesaid factory granted exemption from the payment of the employers' special contribution under section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948) until enforcement of the provisions of Chapter V of the Act in that area by the Central Government in the notification of the Government of India in the late Department of Social Security No. 6/26/64/HI dated the 7th August, 1964;

And, whereas the Central Government is satisfied that the insurable population of the Rayadrug area in the district of Anantapur in the State of Andhra Pradesh has now exceeded 500, and it is no longer a sparse area;

Now, therefore, in exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the said notification; namely:—

In the Schedule appended to the said notification, in the entries relating to Serial No. 1, the entry "Rayadrug" in Column 2 and the corresponding entries in Column 3 shall be omitted.

[No. F. 6/31/68/HI/II.]

S.O. 1812.—Whereas the Central Government was satisfied that Messrs K. Malikharjuna Swamy Silk Twisting Factory was situated in Rayadrug area which was a sparse area (that is, an area whose insurable population was less than 500) in the district of of Anantapur in the State of Andhra Pradesh;

And, whereas by virtue of its location in a sparse area, the aforesaid factory granted exemption from the payment of the employers' special contribution under section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), until enforcement of the provisions of Chapter V of the Act in that area by the Central Government in the not ification of the Government of India in the late Department of Social Security No. 6/61/64/HI dated the 2nd September, 1964;

And, whereas the Central Government is satisfied that the insurable population of the Rayadrug area in the district of Anantapur in the State of Andhra Pradesh has now exceeded 500, and it is no longer a sparse area;

Now, therefore, in exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the said notification namely:—

In the Schedule appended to the said Notification Serial No. 1 and the entries relating thereto shall be omitted.

[No. F. 6/31/68/HI/III.]

S.O. 1813.—Whereas the Central Government was satisfied that M/s. Sri Prasanna Venkateswara Starch Industries was situated in Rayadrug area which was a sparse area (that is, an area whose insurable population was less than 500) in the district of Anantapur in the State of Andhra Pradesh;

And, whereas by virtue of its location in a sparse area, the aforesaid factory was granted exemption from the payment of the employers' special contribution under section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948) until enforcement of the provisions of Chapter V of the Act in that area by the Central Government in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 3206 dated the 15th October, 1966.

And, whereas the Central Government is satisfied that the insurable population of the Rayadrug area in the district of Anantapur in the State of Andhra Pradesh has now exceeded 500, and it is no longer a sparse area;

Now, therefore, in exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the said notification namely:—

In the Schedule appended to the said notification Serial No. 1 and the entries relating thereto shall be omitted.

[No. F. 6/31/68/HI/IV.]

S.O. 1814.—In exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factories mentioned in column 4 of the schedule below in sparse areas in the State of Gujarat and specified in column 3 of the said schedule, hereby exempts the said factories from payment of the employers' special contribution leviable under chapter VA of the said Act until the enforcement of the provisions of chapter V of that Act in those areas:—

SCHEDULE

Serial No.	Name of District	Name of Area	Name of the Factory
1	2	3	4
1	Ahmedabad	Dehgam	(i) M/s. The Ghanshyam Pottery Works. (ii) M/s. Amin Bobbin Co.
2	Baroda	Chhota Udepur	(i) M/s. Eastern Mineral Industries. (ii) M/s. Mahalaxmi Minerals.
	Do.	Sama	M/s. Gujarat Trading Co.
	Do.	Padra	M/s. S. T. Depot Workshop.
3	Bulsar	Dungri	M/s. Solar Syndicate.
	Do.	Chikhli	M/s. Gujarat Auto & Agriculture Implement Industries.

1	2	3	4
	Bulsar	Maroli (Maharvar)	M/s. The Navsari Processing Industries Private Ltd.
	Do.]	Killa-Pardi (Kotlav)	M/s. Besto Industries (India).
	Do.]	Khatlawada	M/s. Style Plast.
	Do.]	Nargol	M/s. S.T. Depot Workshop.
	Do.]	Morai]	M/s. Speciality Papers Ltd.
4	Banaskanth	New-Deesa	M/s. Nizar Bone Mills.
5	Bhavnagar	Shambura (Kardek)	M/s. Janta Bricks Manufacturing Co.
	Do.]	Mahuva	(i) M/s. The Mahuva Ginning Co. (ii) M/s. Jafarali Fazalbhoy Oil Mills. (iii) M/s. Jogi Saw Mills. (iv) M/s. Shah Tribhovandas Balubhai & Co. Oil Mills. (v) M/s. Keshavlal & Co. (Shree Oil Mill). (vi) M/s. Government Power House. (vii) M/s. Hasmukh Oil Mills. (viii) M/s. Mahuva Transport Co. (ix) M/s. Yakubali Jafarali.
6	Jamnagar	Aliabada	M/s. Gujarat Abrasives Manufacturing Co.
7	Kaira	Kanjari	(i) M/s. Cattle Feed Compounding Factory (ii) M/s. The Kaira District Co-operative Milk Producers Union Ltd.
	Do.]	Dakor	M/s. Somaiya Tobacco Co.
	Do.]	Mogri	M/s. Ishwarbhai Zaverbhai Patel.
	Do.]	Bhuvel	M/s. Becharbhai Girdharbhai Patel Jerda Factory.
8	Kutch	Lakadia	M/s. The Hindustan Construction Co. Ltd.
	Do.]	Adipur (Gandhidham)	M/s. Gandhidham Spinning and Manufacturing Co. Ltd.
	Do.]	Gandhidham	M/s. Indian Oil Corporation.
9	Mehsana	Patan	(i) M/s. Navyug Industries. (ii) M/s. Pankaj Manufacturers.
	Do.]	Visnagar	M/s. Visnagar Co-oper Spinning Mills Ltd.
	Do.]	Vijapur	M/s. Kastar B Industries (P) Ltd.
	Do.]	Kadi]	M/s. S.T. Depot.
10	Panchmahal	Basca	M/s. Nutan Quarry Works.
	Do.]	Godhra	(i) M/s. Shri Jayant Oil Mills. (ii) M/s. Shri Jayant Flour Mills. (iii) M/s. The Godhra Electricity Co. Ltd. (iv) M/s. Bombay Bone Mills. (v) M/s. Shri Vallabh Oil Mills. (vi) M/s. A.I. Hathila. (vii) M/s. Godhra S.T. Depot. (viii) M/s. Ganesh Oil Mills. (ix) M/s. Kunj Bihari Roller Flour Mills. (x) M/s. Shri Jindas Oil Mills. (xi) M/s. A. J. Umerji Batliwala.

1	2	3	4
11	Sirat	Bardoli	M/s. Ashok Stone Processing Co.
12	Sabarmantha	Himatnagar	M/s. S.T. Divisional Workshop.

[No. F. 6(34)/68-HI.]

New Delhi, the 18th May 1968

S.O. 1815.—In pursuance of clause (b) of section 8 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby nominates Dr. P. K. Duraiswami, Additional Director General of Health Services and Shri S. R. Bhise, Director General, Factory Advice Service and Labour Institutes, to be members of the Standing Committee of the Employees' State Insurance Corporation, and makes the following further amendments in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 948 dated 30th January, 1967, namely:—

In the said notification, under the heading "(Nominated by the Central Government under clause (b) of section 3)",—

- (i) for the entry against item 2, the following entry shall be substituted, namely:—"Dr. P. K. Duraiswami, Additional Director General of Health Services,";
- (ii) for the entry against item 4, the following entry shall be substituted, namely:—

"Shri S. R. Bhise, Director General, Factory Advice Service and Labour Institutes".

[No. F. 3/7/68-HI.]

1816.—In pursuance of sub-section (1) of section 10 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby nominates, in consultation with the Indian Medical Association, New Delhi, Dr. (Miss) Sobha Ghosh, as a member representing medical practitioners on the Medical Benefit Council and makes the following further amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2899 dated the 27th September, 1966, namely:—

In the said notification, under the heading "(Nominated by the Central Government under clause (g) of sub-section (1) of section 10 in consultation with organisations of medical practitioners recognised by that Government)", for the entry against item 25, the following entry shall be substituted, namely:—

Dr. (Miss) Sobha Ghosh,
12/1/1, Grove Lane,
Calcutta-28.

[No. F. 3/2/68-HI.]

S.O. 1817.—In pursuance of clause (c) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby nominates Dr. P. K. Duraiswami, Additional Director General of Health Services, and Shri S. R. Bhise, Director General, Factory Advice Service and Labour Institutes, to be members of the Employees' State Insurance Corporation and makes the following further amendments in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2551 dated the 9th August, 1966, namely:—

In the said notification, under the heading "(Nominated by the Central Government under clause (c) of section 4)",—

- (i) for the entry against item 5, the following entry shall be substituted, namely:—

"Dr. P. K. Duraiswami, Additional Director General of Health Services, Government of India,";

(11) for the entry against item 7, the following entry shall be substituted, namely:—

“Shri S. R. Bhise, Director General, Factory Advice Service and Labour Institutes, Government of India,”;

[No. F. 3/6/68-HI.]

DALJIT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 6th May 1968

S.O. 1818.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Bhilai Steel Plant and their workmen, which was received by the Central Government on the 2nd May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR.

Dated April 18, 1968.

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE REF. No. CGIT/LC(R) (108) of 1967

PARTIES:

Employers in relation to the Management of Bhilai Steel Plant, Bhilai, Distt., Durg (M.P.).

Vs.

Their workmen, represented through The General Secretary, Samyukta Khadan Mazdoor Sangh, Rajnandgaon (M.P.).

APPEARANCES.

For the employers.—S/Sri R. P. Singh, Senior Labour Welfare Officer (Mines), G. D. Sharma, Senior Personnel Officer, and L. M. Tembhekar, Addl., Labour Welfare Officer (Mines), Bhilai Steel Plant.

For workmen.—Sri P. K. Thakur, Vice President, Samyukta Khadan Mazdoor Sangh.

INDUSTRY: Ore Mines:

DISTRICT: Durg (M.P.).

AWARD

The Government of India, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) referred the following matter of dispute to this Tribunal by Government Notification No. 37/37/65-LRI dated 24th April, 1967, for adjudication:—

Matter of Dispute

Whether the management of Rajhara Mines of Bhilai Steel Plant was justified in not appointing Shri H. Ghose, to the post of Claims Inspector in a regular capacity? If not, to what relief is he entitled?

The facts of the case are simple. Sri H. Ghosh, the workman concerned, is Senior Assistant with the opposite party, the employers. He was allowed to officiate as Claims Inspector of Rajhara Mines for about 26 months. In another mines of the employers, the Nandini Mines, another Senior Assistant, Sri Purohit, was similarly officiating. The post of Claims Inspector is not in the line of promotion of Senior Assistants. The management decided to advertise for the post in the advertisement notice dated 20th December, 1963. The qualifications were stated as “preferably Graduate” or “if a non-graduate then 15 years practical experience.” Sri Ghosh is a non-graduate and had passed B.A. Part I examination. There were 96 applications received which were scrutinised in the recruitment section and 10 candidates were called for interview. Sri Ghosh was not called for interview. He represented to the management and he was informed that he did not fulfil the requisite qualifications. As a result of interview by the

Selection Committee another person Sri V. P. Vaish who is M.A. was selected as Claims Inspector in place of Sri Ghosh and the other officiating Claims Inspector, Sri Purohit was, however, selected for the second post. The Union took up the case alleging that in denying promotion Sri Ghosh who had already officiated for 26 months as Claims Inspector and was better qualified he has been unfairly treated and the action of the management was *mala fide* and amounted to unfair labour practice. The management refuted the claim on the ground that Sri Ghosh could not be called for interview and selected because he did not fulfil the prescribed qualifications and there was no right in him by simply officiating on the post which was not a promotion post in his line. There was no *mala fide* intention and no unfair labour practice. The pleadings of the parties gave rise to the following additional issues framed in the case:—

Addl. Issues

1. Whether by officiating on the post of Claims Inspector, Shri H. Ghosh acquired any right for permanent appointment?
2. Whether in appointing another person the management was actuated by unfair labour practice and the conduct was *mala fide*?
3. To what relief if any is workman concerned entitled?

Findings:—

3. Issue No. 1.—It was admitted by Sri Ghosh himself in his evidence that the post of Claims Inspector was not in the channel of promotion for his post. It was further admitted that the post was a selection post. That being so, mere fact that he had officiated on that post for a certain period conferred no right on him to the post of Claims Inspector.

3-A. Issue No. 2.—It is well settled that promotion is a management function and the Tribunal will not interfere unless the action of the management was *mala fide*. There is no indication of *mala fides* in this case. The post was a selection post and the notice of advertisement specified the conditions of eligibility of the applicants to be either graduate or 15 years practical experience. Evidently Sri Ghosh did not fulfil the prescribed qualifications and for this reason he was not called for interview, as stated by Sri G. D. Sharma Senior Personnel Officer of the employers. Sri Ghosh was informed on his representation as to the reason why he was not called for interview. Sri Sharma fairly admitted that the record of Sri Ghosh was no doubt good and he has not been debarred from seeking promotion in his line. Had there been any intention of *mala fide* the fact would not have been so candidly admitted by the management's witness.

4. It was faintly suggested in the written statement of the Union that Sri Ghosh was not called for interview and selected because of his active interest in trade union activities. What those activities were which could have weighed in the mind of the management had not been stated in the written statement? Sri Ghosh in his evidence stated that he had participated in a token strike along with others on 26th June, 1964. His name was initially in the list of candidates who were to be called for interview but later on, after the token strike his name was removed. He has had no personal information. His information was based on hearsay through the Branch President who had not been produced in evidence. No credence can therefore be given to this part of the statement which obviously is an after thought. Reliance was placed on a confidential note (Ex. W/4A) of Sri M. B. Bhaduri, A.S.O.M.Q. (R) to Sri K. K. Sengupta, S.O.M.Q. In which it was reported by Sri Bhaduri that in denying promotion to Sri Ghosh whose record had been good he had become a disgruntled worker and had turned into a trade union leader. How this confidential note came in possession of the Union Secretary is difficult to comprehend. Evidently, this has been secured by some surreptitious means. This note, however, does not support the case that he was denied promotion because of any trade union activity. On the other hand, it states that after he had not been selected he has turned into a union worker. That may be so but this is a subsequent conduct. It is manifest that there was no unfair labour practice or *mala fides* in not selecting Sri Ghosh to the post of Claims Inspector which was not a selection post and not in the channel of his promotion.

5. Issue No. 3.—The workman concerned, Sri Ghosh, is not entitled to any relief.

Decision:—

The management of Rajhara Mines of Bhilai Steel Plant was justified in not appointing Sri H. Ghosh to the post of Claims Inspector in a regular capacity and Sri Ghosh is not entitled to any relief. No order for costs.

(Sd.) G. C. AGARWALA,
Presiding Officer.

18-4-1968.

[No. 37/37/65-LRI.]

S.O. 1819.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of Shri A. N. Roy, Arbitrator in the industrial dispute between the management of Messrs Rajaramka, Brothers Private Limited, Tumsar and their workmen represented by Balaghat Mazdoor Sangh, Waraseoni, District Balaghat, which was received by the Central Government on the 27th April, 1968.

ARBITRATION AWARD UNDER SECTION 10A OF THE INDUSTRIAL DISPUTES ACT, 1947

PARTIES:

Employers: Messrs Rajaramka Brothers Private Ltd., Tumsar (Maharashtra).

Workmen: Represented by Balaghat Zila Khadan Mazdoor Sangh, Waraseoni, District Balaghat (Maharashtra). Regd. No. 646.

The above named parties through their representatives entered into an agreement for reference of the following specific matter in dispute to the undersigned for arbitration under Section 10A by their agreement dated 21st August, 1966:

"Whether the employees employed in Miragpur, Paoni, Jaitpurkhapa, Selwa, Hathoda, Arjuni and Seongi Manganese Mines and also the workers employed at Katangi Railway sidings, employed by Messrs Rajaramka Brothers Private Ltd., Tumsar (Maharashtra) are entitled to the bonus for the year 1964-65 under the Payment of Bonus Act, 1965? If so, at what rate?"

The said agreement was published by the Government of India, Ministry of Labour, Employment and Rehabilitation, Department of Labour and Employment vide their No. 35/10/66-LR-I, dated 15th November, 1966 which appeared in the Gazette Extraordinary, Part II, Section 3, Sub-Section (ii) on 23rd November, 1966 as S.O. 3598.

The parties were requested on 2nd January, 1967 to send their statements of the case within 10 days of the receipt of the letter, endorsing a copy thereof simultaneously to the other party and also to furnish their comments on the statement of the opposite party within five days. The General Secretary of the union submitted his statement on 9th January, 1967 but the employers requested for time till 24th January, 1967. The management submitted their case on 24th January, 1967 and the parties were called for a hearing on 29th January, 1967 at Nagpur. The parties appeared at that date and since a copy of the statement of the management was handed over to the union only on this date, the union representative requested for ten days time to submit his rejoinder to the management's statement and it was agreed that he will submit a copy of the same direct to the management. He also requested for production of the following documents by the management:—

- (i) Deed of contract between R. S. Seth Gopikisan Agarwal and Messrs Rajaramka Brothers (P) Ltd.
- (ii) Audited balance-sheet of Messrs Rajaramka Brother (P) Ltd, for the years 1964-65.
- (iii) Employees' Register in the Form 'B' for the years 1959, 1960, 1963 and onwards.

The next hearing was fixed for 27th March 1967 which had to be changed to 28th March, 1967, giving advance information. The management requested for postponement on account of the death of the father of the management's representative. Meanwhile, the union vide its letter dated 15th March, 1967

again requested for the production of the following records by the management:—

- (i) Monthly muster roll in respect of staff for the years 1959 to 1966;
- (ii) Register in Form 'B'—Employment Register; Form 'D'—Daily attendance register; Form 'E'—Underground attendance register—Form III—Payment of Wages Register—Register for annual leave with wages for the years 1959 to 1966.
- (iii) Provident Fund Register in respect of Miragpur Mines for the years 1959 to 1966;
- (iv) Contract deed or deeds, if any, between R. S. Seth Gopikishan Agrawal and Messrs. Rajaramka Brothers (P) Ltd., Tumsar.
- (v) Company's balance-sheets duly audited by the auditor for the years 1964 and 1965 commencing from the accounting year of 1964.

The postponed hearing was fixed for 25th April, 1967 at Nagpur and parties were specifically requested to produce the relevant records. The management and the union did not appear on the date fixed *vide* their letter dated 27th April, 1967, the management requested for another date. The parties were then requested to confirm whether they could attend the hearing on 9th May, 1967. But the management telegraphically requested for a state between 13th and 15th May, 1967. The hearing was fixed for 13th May, 1967. This time the union requested for hearing on 20th May, 1967 by a telegram. The parties also extended by joint letter the time for submission of the award till 20th June, 1967.

Later the parties jointly requested for a hearing on 3rd June, 1967 by a telegram dated 19th May and the said date was confirmed to the parties.

A telegram was received from the representative of the management on 2nd June, 1967 stating that since the General Secretary of the Union, Shri Sondule, was not appearing, they had also requested for adjournment and were jointly requesting for a next date. Another telegram was received from Shri Sondule stating that the management detained him on a plea that the undersigned had adjourned the hearing. The management have confirmed their telegram by their letter dated nil with a copy to the union and the same was received by the undersigned on 5th June, 1967. The union representative however expressed his shock on the conduct of the management *vide* his letter dated 16th June, 1967 and alleged that the management played a "fraud" on him and it was his "wrongful confinement". He had not endorsed a copy of this letter to the management.

By a telegram dated 19th June, 1967, it was communicated that the parties were jointly trying for an agreement and are also extending the time for submission of the award and this joint extension of time till 20th September, 1967, was communicated *vide* their joint letter dated the 16th June, 1967.

Hearing was fixed for 7th July 1967 at Ajmer but the management again requested for a postponement till the first week of August, 1967 on the ground of prior engagements and the next hearing was fixed for 4th August, 1967. This time again the management by a telegram dated 1st August, 1967 requested for adjournment on account of indisposition of their representative and pre-engagement of union representative and requested for another date. This telegram was elaborated by a registered letter dated 31st July, 1967 jointly signed by the parties and the date for giving award was also jointly extended up to 30th October, 1967.

Next hearing was fixed for 29th August 1967 at Ajmer. The representatives of the management and the union both appeared. It was stated on behalf of the management, that R. S. Seth Gopikishan Agrawal of Tumsar was the lessee of the mines and by an agreement dated 1st September 1960, the lessee appointed R. S. Seth Gopikishan Agrawal & Sons as "Managers". A copy of this agreement was placed on record. It was further stated that the managers appointed M/s. Rajaramka Brothers as the raising and loading contractors on the terms and conditions incorporated in another agreement dated 1st September 1960 which was also placed on record. The firm of Rajaramka Brothers had been working from 1st September 1960 and should be treated as a new establishment as defined in Section 16 of the Payment of Bonus Act, 1965 and 1964-65 was only the 5th year of existence, of the firm M/s. Rajaramka Brothers, so, no Bonus is payable for the year 1964-65 and it was also added that the company has made no profits during the past five years. A request was made for production of profit and loss accounts for the years 1960-61, 1961-62, 1962-63, 1963-64, 1964-65. The union representative also prayed for adjournment as the General Secretary could not attend due to other engagements and the

hearing was adjourned for 25th October, 1967. The parties also agreed jointly to extend the time for giving of an award till 30th November, 1967.

The union representative appeared on 25th October 1967 but the representative of the management did not turn up. The management at this time also requested for adjournment due to indisposition of the authorised representative. The request for adjournment was turned down by a telegram but nobody appeared pleading that enough time was not left for them to attend on the date fixed.

The hearing was then fixed for 28th November, 1967 and meanwhile, the General Secretary of the Union, raised a claim of Rs. 450/- as loss caused to him on account of non-appearance of the management on the date fixed (25th October 1967). The management was requested to consider it. The next hearing was fixed for 30th November, 1967. The parties jointly extended time for giving of the award till 15th January, 1968 and also requested for a date in 3rd week of December, 1967. Meanwhile the management also forwarded with their letter dated 24-11-67 a copy of mutual agreement signed between parties in respect of some other dispute on 21-8-66 wherein it was agreed that M/s. Rajaramka Brothers (Private) Ltd., Tumsar will pay the bonus under the Payment of Bonus Act, 1965 to the employees of Miragpur Mines for the year 1965-66, as on 30th June, 1966 under Sec. 16 of this Act. They argued that when the union had agreed regarding applicability of Section 16, in respect of M/s. Rajaramka Brothers, (P) Ltd., which came into existence from 16-5-65, the question for payment of bonus by Rajaramka Brothers, which came into existence on 1-9-1960 and for which 1964-65 is the fifth year and when there was no profit at any stage, the question of payment of bonus cannot arise under Section 16 of the Act.

By a telegram dated 29th November, 1967, the employers regretted their inability to attend on 30th November, 1967 and requested for postponement till 3rd week of December. The hearing was fixed at Ajmer for 19th December 1967 and the management was also requested to produce balancesheets for the years 1960-61, 1961-62, 1962-63, 1963-64 and 1964-65. The parties by a joint letter again extended the date for giving an award till 15th January, 1968 and jointly requested for a date in third week of December 1967. The management promised to send their comments on the union's representation *vide* their letter dated the 8th December, 1967 but have not done so far. The management again requested for the change of date to 30th or 31st December, 1967 on account of pre-engagement and the next date was fixed for 12th January, 1968 at New Delhi. The union sent a telegram intimating that they were not attending and they could only attend if at least 10 days time was given in advance. The next date for hearing was fixed on 9th February, 1968 at Delhi. The management had also requested for a change of date *vide* their letter of 30th December, 1967.

The union under its letter dated 24th January, 1968, requested the management to produce:—

- (1) The deed of contract entered into between R. S. Seth Gopikishan Agrawal, Tumsar and M/s. Rajaramka Brothers (P) Ltd., Tumsar;
- (2) Copies of leases of all the Mines owned by Seth Gopikishna Agrawal;
- (3) Returns of chargeable profits under Companies (Profits & Surtax) Act, 1964, Secs. 5 and 6. This request of the union was communicated to the management under a registered letter dated the 29th January, 1968. The management again wanted postponement on the ground that the Agent was unwell. But the union representative appeared on 9th February, 1968.

On 15th January, 1968, the Chief Agent and Works Manager, Rajaramka Brothers (P) Ltd. met me in office. He failed to produce the balancesheet but promised to produce the balancesheet for 1960-61 on 16th January 1968 and the same was produced on the said day. For other balancesheets, he stated that it may not be possible to produce the same on 9th February 1968, but he will produce for as many years as possible on the next date of hearing. He was also directed to forward copies of the balancesheets to the union for their comments, if any.

On 9th February, 1968, the union representative appeared, but the representatives of the management did not turn up and again requested for adjournment by a telegram till 2nd week of February, 1968. The hearing was fixed for 19th February 1968 at Nagpur. The union representative came to Nagpur on that date but the hearing could not be held as the undersigned reached late only at 6-00 P.M. by train. The representative of the management met on 20th February and argued that in terms of provisions of sub-section (4) of Section I of the Payment of Bonus Act, the balancesheets for the previous years were not necessary for deciding the issue.

He also agreed to submit the balancesheet and profit and loss accounts for the year 1964-65 by 2nd March, 1968, and 4th March, 1968 was fixed as final date for hearing at Delhi. He also stated that the relevant records could not be produced as the same have been seized by the Central Excise Department.

The union representative submitted his written statement again on 24th February, 1968. In the said statement, it has been argued that Seth Gopikishan Agrawal has got the exclusive control and supervision over all the affairs of the Manganes Industry and he is the lessee for the Mines. The management of M/s. Rajaramka Brothers (P) Ltd., is a sister concern of Seth Gopikishan Agrawal and his sons are the directors in this firm. Even the Agent was an employee of Seth Gopikishan Agrawal and holds the post still under the management of M/s. Rajaramka Brothers (P) Ltd. He stated that Payment of Bonus Act is applicable to all pending disputes on bonus for 1962 onwards as on 29th May, 1965 and under Section 16, the establishment is not to be deemed to be newly set up merely by reason of a change in its location, management, name or ownership. He also contended that the accounting year for the concern may be taken as year ending 30th June, as this option has been exercised by the management in terms of settlement dated 21st August 1966. The union in fine claimed the bonus at the rate of 16 per cent the salary or wage.

Hearing was again fixed for 18th March, 1968 at Delhi and the management was also requested to furnish the names of directors of M/s. Rajaramka Brothers (P) Ltd., Tumsar and copies of audited balancesheet and profit and loss accounts for the years 1961-62, 1962-63, 1963-64, and it was said that in the absence of non-production an adverse inference would be drawn and no further adjournment would be granted. This time, the union representative telegraphically informed that he is unable to attend as he has been taken ill. He also complained by a letter that the management have not paid him the costs for last hearing when they failed to turn up. The parties were again requested to appear for hearing on 20th April, 1968 as they had extended the time by an agreement for giving the award till 20th April, 1968. A telegram has been received requesting postponement from the management as the representative is suffering from acute pain due to fractured leg and they have requested for extension of time at least for one month.

A reading of the foregoing paragraphs will reveal that the parties do not appear to be serious about the matter in dispute. Frequent adjournments have been requested. Even when one has made allegations against the other, joint requests have been forthcoming for adjournment and the time for giving the award has been extended. In these circumstances, I am of the opinion that no useful purpose will be served by keeping this matter hanging any longer.

From the agreement dated 1st September 1960 between R. S. Gopikishan Agrawal and M/s. R. S. Seth Gopikishan and Sons, it is seen that the first party appointed the second party as managers. It is a matter relating to a Joint Hindu Family. The agreement states that the managers under the control, supervision and direction of the first party, shall manage and supervise the extraction of the ore and the existing plant, building, machineries etc., at the Mines which heretofore belong to the joint family continued to remain available to the managers for carrying out the work of extraction of the ore. The managers on the same date have entered into an agreement for raising, transporting and loading of the ore with M/s. Rajaramka Brothers, Tumsar. In terms of the reference, I have not to look into the affairs of these parties. The employer for matter in dispute is M/s. Rajaramka Brothers (Private) Ltd. This concern came into being on 16th May 1965. The allegation of the union that the Directors of M/s. Rajaramka Brothers (Private) Ltd., are the sons of the lessee, has not been denied. Keeping all the factors that have been brought on record, it appears that the parties are confused between Rajaramka Brothers and Rajaramka Brothers (Private) Ltd. The establishment of Rajaramka Brothers (Private) Ltd., reasonably should not be treated as new establishment keeping in view explanation I to Section 16(I) of the Payment of Bonus Act, 1965.

The matter in dispute for arbitration is between M/s. Rajaramka Brothers Pvt. Ltd., Tumsar and workmen represented by the union Balaghat Zila Khadan Mazdoor Sangh, Waraseoni, Distt. Balaghat. The said establishment is reported to have come into existence on 16th May 1965 and the management in their letter dated 24th November 1967, have argued that as the union has accepted this establishment as a new establishment, there is no reason, why the establishment of Rajaramka Brothers, which came into existence on 1st September 1960, should not be considered as a new establishment. I fail to follow the relevancy of this fact. The adjudication is between M/s. Rajaramka Brothers (P) Ltd., and the union and it is immaterial to decide the issue regarding Rajaramka Brothers being a new establishment or otherwise.

The accounting year in respect of the establishment of Rajaramka Brothers Pvt. Ltd., is a year ending on 30th June, as per agreement dated 21st August 1967 and since the Payment of Bonus Act will have effected in respect of an accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year and as the dispute referred is for the year 1964-65, the claim for bonus for the year 1964 is not covered under the said Act.

Enough material has not been placed before me to determine the merits of the claim but from whatever has been brought on record, it can safely be presumed that M/s. Rajaramka Brothers (P) Ltd., is an establishment to which the Act applies and the provisions of Section 16 would not apply to the said establishment keeping in view explanation I under Section 16 (I) of the Act. The claim of workmen for bonus for the year ending 30th June, 1965 is sustainable. The payment must be made as provided for in the Act.

This award being not on the merits of the claims, the parties will be free to raise a dispute regarding the quantum of bonus in usual course.

(Sd.) A. N. Roy,
Arbitrator &,
Regional Labour Commissioner (Central) (Manual),
New Delhi-1.
[No. F.35/10/66-LR-I.]

New Delhi, the 8th May 1968

S.O. 1820.—In pursuance of Section 17, of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal Allahabad in the Industrial Dispute between the employers in relation to Cantonment Board, Kanpur and their workmen, which was received by the Central Government on 26th April, 1968.

BEFORE THE INDUSTRIAL TRIBUNAL (CENTRAL), ALLAHABAD.

Dated: April 22, 1968.

PRESENT:

Sri Mithan Lal.—*Presiding Officer.*

REFERENCE No. (C) 10 OF 1967

BETWEEN

The Cantonment Board, Kanpur.

AND

Sri Muzhar Hussain, ex-Cattle Pound Keeper.

APPEARANCES:

On behalf of the Employers.—Sri K. K. Gupta, Executive Officer, Cantonment Board, Kanpur.

On behalf of the Workmen.—Sri P. K. Kulshreshtha, authorised representative of Cantonment Board Employees' Union, Kanpur.

AWARD

The Central Government in exercise of the powers conferred by Section 7A and clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (No 14 of 1947) referred the following dispute for adjudication to this Tribunal by Notification No. 9/3/67/LR.III, dated 20th November, 1967.

"Whether the action of the management of the Cantonment Board, Kanpur was justified in terminating the services of Sri Muzhar Hussain, ex-Cattle Pound Keeper with effect from the 27th April, 1966? If not, to what relief the workman is entitled?"

The case of the workman in a nut-shell is that he was employed as a Cattle Pound Keeper since the 5th March, 1956 and has been working as such. He was charged for absence on the 17th January, and 19th January, 1966, and was ultimately discharged without any proper inquiry. The order of discharge is said to be illegal and unjustified.

It has been prayed that Sri Mazhar Hussain, the workman concerned be reinstated and be paid full compensation.

The case of the Cantonment Board *inter alia* is that the post of Cattle Pound Keeper has been abolished in accordance with the orders of the General Officer Commanding-in-Chief, Central Command, Lucknow and so such a discharge or removal from service of the workman concerned cannot be questioned. It has also been alleged that the dispute is not an industrial dispute because--

The following issues were framed from the pleadings of the parties:--

1. Whether the dispute is not an industrial dispute because--

(a) It has not been sponsored by a substantial number of the employees of the Cantonment Board?

(b) mere passing of a resolution, if any, by the Executive Committee of the union does not amount to proper espousal of the cause?

2. Whether the action of the Cantonment Board in terminating the services of Mazhar Hussain was illegal in as much as no proper inquiry was made against the conduct and there was violation of the principle of natural justice?

Findings:

Issues 1, 2 and the Matter of Dispute.—This case was fixed for final hearing today but neither of the parties put in appearance either before lunch or after lunch though the Tribunal waited for them till 4 P.M. No communication making any sort of prayer has been received. The claim of the workman remains unsubstantiated.

My award is that it has not been established that the termination of services of Sri Mazhar Hussain by the Cantonment Board, Kanpur was in any way unjustified or illegal. The workman is not entitled to any relief.

No order is made as to costs.

(Sd.) MITHAN LAL,
Presiding Officer,
22-4-1968

[No. 9/3/67-LRIII.]

S.O. 1821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, Dhanbad in the Industrial Dispute between the employers in relation to Messrs Volkart (India) Limited, Bombay and their workmen, which was received by the Central Government on 28th April, 1968.

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT DHANBAD.

In the matter of a reference under section 10(1A)(2) of the Industrial Disputes Act, 1947.

REFERENCE NO. NT(3) AND NT(4) OF 1967

PARTIES:

Employers in relation to Messrs Volkart (India) Limited, Bombay.

Vs.

Their workmen represented by the All India Voltas and Volkart Employees' Federation, Bombay.

PRESENT:

Shri Kamla Sahai.—*Presiding Officer.*

APPEARANCES:

For the Employers.—Shri L. C. Joshi, Labour Adviser with Shri C. V. Pavaskar, Asstt., Labour Adviser, Bombay Chamber of Commerce and Industry, Bombay.

For the Workmen.—Shri C. L. Dudhia, Advocate.

Camp: Bombay, dated the 19th April, 1968

AWARD

There was dispute with regard to bonus between Volkart (India) Ltd., Bombay and their workmen represented by the All India Voltas and Volkart Employees Federation, Bombay for the accounting years 1964-65 and 1965-66. For

both these years, the company agreed to pay a bonus of 4 per cent to the employees and both parties jointly applied to the Central Government under sub-section 2 of section 10 of the Industrial Disputes Act (hereinafter referred to as the Act) for reference of the Industrial disputes, relating to bonus payable in both accounting years between them, to a Tribunal. By order No. 17/8/66-LRIV dated the 20th December, 1966, the Central Government referred under sub-sections (1A) and 2 of section 10 of the Act the dispute relating to bonus for the accounting year 1964-65 to the National Industrial Tribunal at Bombay, which numbered the reference as reference 4 (NT) of 1966. The schedule attached to the reference is as follows:—

"What should be proper quantum of bonus payable to the employees covered under this reference for the Company's financial year ending on the 31st August, 1965, as per the Payment of Bonus Act, 1965, (21 of 1965)."

2. By order No. 17/8/66-LRIV, dated the 2nd November, 1967, the Central Government transferred this reference to the National Industrial Tribunal at Dhanbad with me as the Presiding Officer. The reference has been numbered here as reference (NT) No. 3 of 1967.

3. By order No. 17/8/66-LRIV, dated the 14th July, 1967, the Central Government referred under sub-sections (1A) and (2) of section 10 of the Act the dispute relating to the bonus for the next year, i.e., 1965-66 to the National Tribunal at Bombay. That Tribunal numbered the reference as reference (NT) No. 5 of 1967. The schedule attached to the reference is:—

SCHEDULE

"What should be the proper quantum of bonus payable to the employees covered under this reference for the Company's financial year ending on the 31st August, 1966 as per the Payment of Bonus Act, 1965 (21 of 1965)?"

4. By order No. 17/8/66-LRIV, dated the 2nd November, 1967, the Central Government has transferred this reference to the National Industrial Tribunal at Dhanbad with me as the Presiding Officer. This has been numbered here as reference NT No. 4 of 1967. In both the references, the Central Government has directed that this Tribunal would proceed with the proceedings from the stage at which they have been transferred.

5. Some facts which seem to be clear on a perusal of the statement of claims filed by the Federation and the rejoinder filed by the company may be stated. The full name of the Federation is All India Voltas and Volkarts Employees Federation and it is a union registered under the Trade Unions Act, 1926. The company has recognised the Federation for the purpose of negotiations of some all India matters including bonus.

6. The firm called Volkart Brothers was formed over a hundred years ago by two Swiss brothers named Solomon Volkart, and Johu Volkart. In 1954, there was a collaboration between this firm on one side and Tata and sons on the other. Voltas Limited came into existence as a result of that collaboration.

7. Afterwards, Volkart Brothers and Patel Cotton Co. (P) Ltd., jointly formed Patel Volkart (P) Ltd., Volkart Brothers also, however, remained. On the 1st September, 1964, the name of Volkart (Bombay) (P) Ltd., was changed into Volkart (India) Ltd., and the name Patel Cotton Co. (P) Ltd., was changed into Patel Volkart (P) Ltd. The stock of foreign cotton held by Volkart (India) Ltd., was transferred to Patel Volkart (P) Ltd. All these three companies have separate legal entities although the staff of one company has been doing some work of the other companies. There are various points of difference between the parties as to the computation of bonus for the two years in question but they will appear from my discussion on the different points in the course of this award.

8. No witness was examined by either party at the hearing. Shri Mukka Krishnappa Salian, the Asstt. Secretary of the Federation has, however, sworn an affidavit which has been filed in this case as Ext. W. 1. Shri Venkataraman, constituted Attorney of the company, has sworn a counter affidavit and that has been filed as Ex. M. 1. Other documents have also been filed by the parties.

9. At the end of the hearing, both parties have jointly filed Exts. MW. 1 and MW. 2 indicating therein the difference in calculation between the two parties. They have also filed a joint application, praying that the Exhibits filed in both cases should be treated as common and that one award should dispose of both the references. Accordingly, this award will govern both the cases. I may also mention that disputes regarding bonus payable for the accounting years 1964-65

and 1965-66 also arose between the Voltas Ltd., and this very Federation. References relating to those disputes were also before this Tribunal and I am disposing of them by a separate award today. They are reference (NT) Nos. 1 & 2 of 1967 of Dhanbad. As some of the points are common, I will make reference to that award in connection with those points.

Payments to officers receiving salaries exceeding Rs. 1600/- p.m.

10. The first point of difference in this case is whether bonus or any other sum paid to officers who receive salaries exceeding Rs. 1600 per month should be added back under the Payment of Bonus Act. There is no provision at all in the Payment of Bonus Act about the addition back of bonus or any other payment made to such officers. As I have said in the other award which I have already referred to, the Payment of Bonus Act has really been framed for the benefit of employees getting a salary which does not exceed rupees sixteen hundred per month and the Act provides for addition back of bonus paid to such employees. Officers receiving more than sixteen hundred do not get any benefit under the Act and there is no provision for addition back of any payment made to them.

11. It appears that a sum of Rs. 21,300 was paid to officers in the year 1964-65 as allowance for one month. The company says that this was an ad-hoc payment made to them as dearness allowance. Shri Dudhia has argued on behalf of the Federation that had it been so, payment would have been made in succeeding years also because dearness has not abated. Whatever may have been the reason for this ad-hoc payment, I am unable to find any provision in the Act under which the payment can be added back either as bonus or as any other kind of payment.

Bonus to Choir Yarn Workers:

12. It appears that Choir Yarn workers of the company working in Cochin were paid bonus at the rate of 8 per cent of their total earnings for the years 1964-65 and 8.7 per cent for the year 1965-66. This appears from the affidavit of Shri Sallan. After some argument, the company has agreed that this amount can be added back. Hence, these payments have to be added back.

Recoveries from Patel Volkart (P) Ltd., and Volkart Brothers:

13. The Federation claims that recoveries from Volkart Brothers and Patel Volkart (P) Ltd., for services rendered by the staff of his company [Volkart (India) Ltd.] should be 89,686 and 1,02,918 for the two years respectively in addition to what has already been realised from those companies. The company has stated that it has realised 48,800 from the two companies in 1964-65 and Rs. 50,900 in 1965-66 and that after taking into consideration the work done for this company by the staff of the other two companies, the amounts realised are more than adequate for both the years in question. It is difficult to appreciate the basis of the federation's calculation. The company in question knows what service its staff has rendered to the other companies and what service the staff of the other two companies has rendered to this company. Keeping all materials in view, it has considered 48,800 to be due from the other two companies and it has realised that amount from them. Sri Sallan has in his affidavit given out an estimate which makes a higher amount recoverable from the other two companies. In my opinion, the estimate of the higher officers of the company should be preferred to the estimate of a typist in the shipping department of the company, as Shri Sallan is. Even his position as Assistant Secretary of the Federation cannot give him an opportunity to estimate accurately the amount which the other two companies should pay to this company for their work done by the staff of this company. Shri Venkataraman has stated in paragraph 7 of his counter affidavit that the following amounts were recovered from the other two companies in the following years:

Year	Amount received from M/s. Volkart (Bombay).	Amount received from Patel Volkart (P) Ltd.
1961-62	88,700	21,170
1962-63	49,000	20,048
1963-64	50,000	12,085
1964-65	25,800	23,000
1965-66	24,400	26,300

It will be seen that substantial amounts have been realised from both companies in each year. There is no reason to think that the management of this company has under-estimated the value of services rendered by the staff of this company to the other two companies after giving credit for the value of the services rendered by the staff of those companies to this company. Mr. Venkataraman has also given the reason for the reduction in the amount and I do not see any good reasons to dis-believe him. No amount can, therefore, be added to the profits of the company as being an amount notionally recoverable from the other companies over and above the realisation which have already been made from them as mentioned above.

Sale of foreign cotton:

14. Another point which Shri Dudhia has urged is that the company transferred on the 1st September, 1964 foreign cotton worth one crore of rupees to Patel Volkart (P) Ltd., at cost price and that its estimated profit amounting to rupees twenty lakhs should be added back. In my opinion, this argument cannot be accepted. The Payment of Bonus Act has not given any right to the employees to control the method in which the company desires to carry on its business. Shri Venkataraman has stated in his counter affidavit that the stock of foreign cotton was, afloat during August, 1964 and the company decided as a matter of policy to discontinue business in foreign cotton with effect from the 1st September, 1964. Hence it became necessary for the company to sell the foreign cotton that was afloat to Patel Volkart (P) Ltd., on a reasonable and adequate price. The amount paid for the cotton to the shippers was Rs. 99,79,152 and it was sold to Patel Volkart (P) Ltd., for Rs. 1,02,01,576 which included the incidental charges also. The company could not delay the same in order to make profit because of its decision to discontinue business in foreign cotton. On the 1st September, 1964, Patel Volkart (P) Ltd., not only took over cotton but also the staff concerned with the cotton business. In these circumstances, it is clear that the Federation is not entitled to add back rupees twenty lakhs or any amount whatever as notional profit which might have been made in the piece-meal sale of foreign cotton.

Sale of fixed assets:

15. Another controversy between the parties is on the question whether the amount of Rs. 2,967 in 1964-65 and the amount of Rs. 13,739 in 1965-66 are to be added back as being loss on sale of fixed assets. There is nothing to show that these are losses of capital nature. According to the entries in the profits and loss account which has been duly certified by the Auditors competent to act as auditors under the companies Act, 1956, the losses are on revenue account. Besides, there is no material on the record to show that these are losses on capital account. Hence these losses cannot be added back.

Donations:

16. The next question is whether donations made by the company in the two years in question are admissible under the Income-Tax Act. Ext. M. 4 is the list of donations made in the two years. It appears from the list that all the donation amounting to Rs. 933.41 in 1964-65 are admissible under section 88 of the Income-Tax Act. It has also been certified to be so by the Auditors who have audited the accounts of the company. These donations cannot therefore be added back. The amount given as donation in 1965-66 was Rs. 9,879.70. It seems that they are substantially admissible. For instance, the amounts of Rs. 4,000/- given for Central Relief Fund and Rs. 3,800/- given to National Defence Fund are certainly admissible. Some of the other amounts are also admissible. So, I accept the statement of the company in its reply to the questions asked by the Federation that non-admissible donations in 1965-66 amounted only to Rs. 1,494.

Provisions for Doubtful Debts and contingencies:

17. The company has made a provision for doubtful debt in each of the two years in question. Under section 36(1)(vii) and (2)(b), no deduction is to be made for the account of any debt unless it is established to have become a bad and irrecoverable debt in the previous year. The provision is not really an expenditure. It pertains of the nature of reserves because it is to be set off in future. I am of the opinion that the amount provided for doubtful debts should be added back. There has also been some question about the provision for contingencies. These provision have also been made for both years. These

amounts cannot be said to have been spent. They are still lying with the company. They are of the nature of reserve because they are meant for being set off against expenditure in future. In my opinion, these amounts also should be added back.

Rate of Income-tax:

18. Another point on which there has been a difference between the two parties is the rate of income-tax which is applicable to this company. The company has stated that it is a closely held company which is not an industrial company and it has been registered under section 43(a) of the Company's Act as deemed to be public company. Under para F. (1)(A) (2) (ii) of Part I to the 1st schedule of the Finance Act and the Finance (No. 2) Act, 1967, the rate of income-tax payable by such a company is 65 per cent. of the total income. The company has given an extract from those Acts. Besides, the auditors have given a special certificate (Ext. M. 7) to the effect that the income-tax payable by the company is 65 per cent. I, therefore, accept the company's contention as to the rate of income-tax payable by it.

Sur-Tax:

19. Under the third schedule, a return of 6 per cent. of its reserve as shown in its balance sheet as at the commencement of the accounting year, including any profit carried forward from the previous accounting year has to be allowed. What the company has done in the balance sheet is that it has shown the gross reserve. Subsequently, dividend was declared and the amount of two lakhs in each of the two years in question out of the reserve became payable as dividend. Shri Dudhia has argued on behalf of the Federation that the reserve in each year should be taken to be the amount left after deducting the dividend paid in that year. In my opinion, this argument is correct. The figure shown as reserve is obviously inflated and at the time when it was drawn, it must have been known that dividend would be paid out of the amount. I, therefore, agree that return on the reserve under item (iii) of the third schedule should be 6 per cent. on the reserve after deducting the dividend declared for that year.

Sur-Tax:

20. There is no difference between the parties as to the rate of Sur-tax but, of course, the quantum will have to be ascertained.

Direct Tax:

21. The last point in controversy is on the question of direct tax as referred to in section 6(c) of the Payment of Bonus Act. It is argued on behalf of the company that the income-tax must be calculated on the amount as found at the stage of calculation of bonus and not at the stage after refund of income-tax is made on the bonus paid to the employees. In fact, the argument is that the income-tax should be calculated notionally. On the other hand, Shri Dudhia has argued that income-tax should be calculated after taking into consideration the refund which will be available on the bonus which is paid to the employees. The scheme of the Act leaves no room for doubt that the charges which have to be deducted under section 6 are prior charges which means before calculation of bonus. If I were to agree with the Federation, the result would be that income-tax would be calculated at the stage of section 6 and thereafter the amount of bonus to be paid to the employees would be ascertained. It will then become necessary to calculate the amount to be refunded as income tax on the total amount of bonus. This amount of income-tax will then be added again to the available surplus. Thereafter the final calculation of bonus will have to be made. I do not think that this will be in keeping with the Scheme of the Act. Reference may be made to the other reasons given in my award of date in the case of Voltas Ltd. *versus* the Voltas and Volkarts Employees Federation, reference (NT) 1 and 2 of 1967.

22. Keeping the above decisions in view, I now calculate the bonus for each of the two years in question. I will take the calculation given by the parties jointly (Ext. M.W.II.) at the end of the hearing as the basis but I will give my own figures.

Calculation for the accounting year 1964-65

Sl. No.	Description	Sub-total	Total	Remarks
1.	Profit as per the profit and loss account.		10,03,451	According to both parties.
2.	Less : Items relating to previous years:			
	Credits : 42,991			
	Debits : 58,498			
			15,507	Do.
			9,87,944	
3.	Add back capital gain on sale of fixed assets.		144	Do.
4.	According to item two of the second schedule, add back provision for:			
	(a) Bonus to employees.	1,20,644		The Federation wanted to add back a further sum of 17,336 as having been paid to non-eligible employees but that has been disallowed.
	(b) Bonus paid to Choir Yarn labourers and debited to profit and loss account of this year	(included in above amount)		According to both parties.
	(c) Depreciation	1,14,191		According to both parties.
	(d) Any other reserve :			
	(i) provision for doubtful debts .	2,250		This amount has to be added back. Company's argument has been overruled.
	(ii) provision for contingency .	97,577		
	(e) Estimated amount which according to Federation is recoverable from Volkart Brothers and Patel Volkart (P) Ltd.	Nil.		The Federation claim 89,656 but that has been disallowed.
	(f) Estimated profits on sale of foreign cotton.	Nil.		Federation claimed 20 lacs but that has been disallowed.
	(g) Ad-hoc payment to officers as dearness allowance for one year.	Nil.		Federation claimed that 21,300 should be added under this head but that has been disallowed.
	(h) Loss on sale of fixed assets.	Nil.		Federation claimed 2,967 to be added back under this head but that has been disallowed.
5.	According to item 3 of the second schedule add back also :			
	(a) bonus paid to employees in respect of previous accounting year	7,345		According to both parties.
			3,42,027	
	(b) Donation in excess of the amount admissible for income-tax.	Nil.		Federation claim Rs. 933.00 to be added back under this head. This is the total donation. Its plea has been disallowed.

Sl. No.	Description	Sub-total	Total	Remarks
6.	Total		13,30,085	
7.	Deductions according to Section 6 :			
	(i) Depreciation as per Income-tax Act.	1,14,191		According to both parties.
	(ii) Development Rebate	2,128		
			1,16,319	
	(iii) Gross profit for bonus calculation.		12,13,766	
	(iv) Less: Income Tax at the rate of 65% on Gross profits	7,88,948		
	(v) Sur-tax at the rate of 35%	54,843	8,43,791	
			3,69,975	
8.	(i) Deduction according to third schedule 85% return on paid-up capital of 25 lacs.	2,12,500		According to both parties.
	(ii) 6% return on reserve amounting to 1,80,938 after deducting the dividend amounting to Rs. 2 lacs.	10,856	2,23,356	
9.	Available surplus		1,46,619	
10.	Allocable surplus, being 60% of available surplus.	87,971		
11.	Amount of minimum bonus at the rate of 4%	89,620		According to both parties.
12.	Less allocable surplus	87,971		
13.	Balance to be set off next year	1,649		

It will be clear from the above that the allocable surplus in the accounting year 1964-65 was not sufficient for distribution of the minimum amount of bonus at the rate of 4%. The company has, therefore, paid to its employees a bonus at that rate. The deficit of Rs. 1,649 will be carried over to the next accounting year to be set off.

23. I now proceed to give the calculation for the accounting year 1965-66. I will again take the joint chart Ext. MW2 given by both parties as the basis but the findings will necessarily be mine.

Year 1965-66

Sl. No.	Description	Sub-total	Total	Remarks
1.	Profit as per profit & loss account.			
	Add :		11,40,495	According to both parties.
	Items relating to previous year not included above :			
	Credits : 28,731			
	Debits : 15,064			
		13,667		According to both parties.
		11,54,162		
2.	Capital gain on sale of fixed assets.	1,162		Do.

Sl. No.	Description	Sub-total	Total	Remarks
3.	According to item No. 2 of the second schedule, and back provision for:			
	(a) bonus to employees . . .	92,690		According to both parties.
	(b) bonus paid to non-eligible employees.	Nil.		The Federation claimed that a sum of Rs. 20,700 should be added back under this head but this has been disallowed.
	(c) According to Federation the additional sum to be recovered from Volkart Brothers and Patel Volkart (P) Ltd.	Nil		Federation claimed an amount of Rs. 1,02,91 ⁸ under this head, but that has been disallowed.
	(d) Loss on sale of fixed assets. .	Nil.		Federation claimed Rs. 13,739 to be added back under this head.
	(e) Any other reserve :			
	(i) provision for doubtful debt	3,748		The company's argument has been rejected.
	(ii) provision for contingencies	1,01,640		
	(f) Depreciation . . .	1,10,746		
4.	According to item No. 3 of the second schedule, add back also :			
	(a) donation in excess of the amount admissible for income tax.	1,494	3,10,318	The Federation claimed Rs. 9,880 in this head but that cannot be accepted.
			14,65,642	
5.	Deductions according to section 6 :			
	(a) Depreciation as per Income-tax Act:	1,10,746		
	(b) Development Rebate . . .	905		
			1,11,651	
6.	Gross profit for bonus calculation .		13,53,991	
7.	Less :			
	(i) Income Tax at the rate of 65%	8,80,094		
	(ii) Sur-Tax at the rate of 35%	67,374		
			9,47,468	
			4,06,523	
8.	Deductions according to the third schedule:			
	(i) 8.5% return on paid up capital to 25 lacs.	2,12,500		
	(ii) 6% return on reverse after deducting the dividend of Rs. 2 lacs.	18,840		
			2,31,340	
9.	Available surplus		1,75,183	
10.	Allocable surplus being 60% of available surplus.		1,05,109	

The company has already distributed bonus of 4% which, according to the company, amount* to Rs. 92,690. The amount left to be set off in the previous year amounts to Rs. 1,649. Adding that amount to this, the total comes to 94,339. Deducting this amount from the allocable surplus of 1,05,109 the total balance which remains is 10,770. This amount is 0.465% of the total wages of Rs. 23,17,270. The company has to pay a further bonus of 0.465% percent to its employees for the accounting year 1965-66.

This is my award. It may be submitted to the Central Government under section 15 of the Act.

(Sd.) KAMLA SAHAI,

Presiding Officer.

[No. 17/8/66-LRIV.]

S.O. 1822.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal Dhanbad in the Industrial Dispute between the employers in relation to Messrs Voltas Limited, Bombay and their workmen, which was received by the Central Government on 29th April, 1968.

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT DHANBAD.

In the matter of a reference under section 10(1A) (2) of the Industrial Disputes Act, 1947.

REFERENCE NO. NT(1) AND NT(2) OF 1967

PARTIES:

Employers in relation to Messrs Voltas Limited, Bombay.

Vs.

Their Workmen represented by the All India Voltas and Volkart Employees' Federation, Bombay.

PRESENT:

Shri Kamla Sahai.—Presiding Officer.

APPEARANCES:

For the Employers.—Shri N. A. Palkhiwala, Advocate with Shri J. P. Thacker and other.

For the Workmen.—Shri C. L. Dudhia, Advocate.

Camp: Bombay, dated the 19th April, 1968.

AWARD

By order No. 17/8/66-LR. IV dated the 20th December, 1966, the Central Government, in exercise of the powers conferred on it by sub-sections (2) and (1A) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes between M/s. Voltas Limited, Bombay and their workmen represented by the All India Voltas and Volkart Employees' Federation, Bombay, for adjudication to the National Tribunal, Bombay:

SCHEDULE

- (A) Whether the quantum of Bonus paid to the employees is what they are entitled to under the Payment of Bonus Act, 1965? If not, what should be the quantum.
- (B) Whether the Salesmen employed by the company are entitled to Bonus for the year 1964-65 under the Payment of Bonus Act, 1965?
- (C) Whether, notwithstanding the provisions of the Payment of Bonus Act, the employees are entitled to get the minimum floor of bonus as hitherto and the Apprentices/Erector Trainees/Temporary Staff to Bonus as per past practice.

This reference was numbered by that Tribunal as No. 3(NT) of 1966.

2. The Government of India later constituted a National Tribunal at Dhanbad with me as the Presiding Officer under section 7B and transferred the above reference to this Tribunal in exercise of the powers conferred upon it by sub-section (1) of section 33B of the Industrial Disputes Act and directed that this Tribunal should proceed from the stage at which the reference has been transferred. This reference relates to the accounting year 1964-65 and it has been numbered here as No. 2(NT) of 1967.

3. By order No. 17/8/66-LR. IV dated the 17th April, 1967, the Government of India referred a similar disputes between the same parties with regard to

1965-66 to the National Tribunal at Bombay where it was numbered as No. 2 (NT) of 1967. The questions formulated in the schedule are the same three questions but, as I have said, they relate to the accounting year 1965-66. By order No. 17/8/66-LR. IV dated the 2nd November, 1967, the Government of India has transferred this reference also to the National Tribunal at Dhanbad with me as the Presiding Officer. It has been numbered here as No. 1(NT) of 1967.

4. Both the cases were heard in continuation. When the hearing of the two cases was about to close, both parties filed an application on the 6th March, 1968, praying therein that the exhibits filed be treated as common exhibits in both cases and that, in view of the fact that common questions of facts and law arise in both the references, the Tribunal may make one award for both. Accordingly, this award will govern both cases.

5. Voltas Limited is a public limited company registered in 1954 under the Indian Companies Act, 1913. It came into existence as a result of joint collaboration of Tata Sons Ltd., and Volkart Brothers who became the dominant shareholders of the company. It has been paying bonus to its employees from the year 1947/1948. There was a bonus dispute between the parties for the accounting year 1956/57 and it was referred for adjudication to Shri M. R. Meher, Presiding Officer of the Industrial Tribunal at Bombay. By his award, he allowed five months' basic salary as bonus. This was published in the July issue of 1959 Industrial Court Reporter, page 534. Both parties appealed to the Supreme Court but the appeals were dismissed. The decision of the Supreme Court is reported as *Voltas Ltd., Vs. Its workmen, 1961 (1) L.L.J. 323*.

6. At that time, the bonus formula of the Full Bench of the Labour Appellate Tribunal (L.A.T.) held the field. Bonus Commission was constituted by the Government of India, Ministry of Labour and Employment, in December, 1961, with the aforesaid Shri M. R. Meher as the Chairman. The Commission submitted its report in January, 1964. By resolution No. WB-20(3)/64 dated the 2nd September, 1964, the Government of India announced acceptance of the commission's recommendations subject to a few modifications mentioned therein. The Payment of Bonus Ordinance 1965 was promulgated on the 20th May, 1965, in order to implement the recommendations of the commission. This ordinance was replaced by the Payment of Bonus Act, 1965 (hereinafter to be referred to as the Act) which came into force with effect from the 25th September, 1965.

7. The Company's financial year begins on the 1st September of each year and ends on the 31st August of the next year. The Payment of Bonus Act became applicable for the first time in the accounting year, 1964-65. By an agreement between the company and the Federation, the company agreed to pay an interim bonus to its employees at the rate of 16.19 per cent of the basic wages/salary and dearness allowance for the year 1964-65 as calculated by the company under the Payment of Bonus Act, 1965. The parties agreed and, in pursuance of that agreement, applied to the Government of India under section 10(2) of the Industrial Disputes Act for reference of the dispute between themselves regarding the bonus for 1964-65 to a Tribunal. They raised the specific questions which the Government has referred to this Tribunal, in reference No. 2(NT) of 1967 of Dhanbad.

8. There was again a dispute between the parties regarding bonus for the accounting year, 1965-66. By an agreement between them, the company paid an interim bonus to its employees at the rate of 13.13 per cent of the basic wages/salaries along with dearness allowance. They further agreed and, in pursuance of the agreement, applied to the Government of India for reference to a Tribunal of their dispute regarding the bonus payable for the year 1965-66. The Government of India has accordingly made reference No. 1 (NT) of 1967 of Dhanbad to this Tribunal.

9. The Federation prayed that the company be called upon to produce the income-tax assessment of any year for which it has been completed. By my order dated the 26th February, 1968, I refused this prayer. Informations asked for by the Federation have been supplied by the company from time to time. No witness was examined at the hearing by either party but parties filed the affidavits of some persons and they also filed documents from time to time in the course of the hearing.

10. On the 1st issue namely, the quantum of bonus which the employees are entitled to get under the Payment of Bonus Act, 1965, there are various points of difference between the parties though it is admitted by both parties that the Payment of Bonus Act is applicable and both these cases are to be governed by

that Act. Before proceeding to consider those points, however, I propose to discuss the scheme of the Act. Section 4 provides that the gross profits derived by an employer in respect of any accounting year shall, except for a banking company, be calculated in the manner specified in the second schedule. Section 5 lays down that the available surplus in respect of any accounting year shall be the gross profits for that year after deducting the sums referred to in section 6. Section 6 states that, so far we are concerned in these cases, the following amounts shall be deducted from the gross profits as prior charges:—

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act;
- (b) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income-tax Act;
- (c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year; and
- (d) such further sums as are specified in respect of the employer in the Third Schedule.

11. "Available surplus" as defined in section 2(6) of the Act is to be arrived at after the deductions mentioned in section 6 from the gross profits for that year. Leaving aside contingencies which do not arise in this case, "allocable surplus", as defined in section 2(4), is 60 per cent of the available surplus.

12. Section 8 makes it compulsory that bonus should be paid to every employee who has worked in the establishment for at least 30 days in the year provided that he has not incurred a disqualification under section 9.

13. Section 10 lays down the minimum bonus which must be paid to every employee in each accounting year as 4 per cent of the salary or wages earned by him during that accounting year or Rs. 40.00 or, in some cases, Rs. 25/-; whichever is higher. Section 11 provides that the maximum bonus which can be paid to any employee in any accounting year is 20 per cent of the wages or salary earned by him during that accounting year. Under section 15, an amount in excess of the amount necessary for distribution of the maximum bonus of 20 per cent is to be carried forward for being set on in the succeeding accounting year and so on upto and inclusive of the fourth accounting year. Where the allocable surplus is not sufficient for payment of the minimum bonus for a particular accounting year, the amount by which the money is short has to be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth accounting year.

14. I may also mention some other important provisions. Under section 12, the salary or wages of an employee, when it exceeds Rs. 750.00 per mensem, has to be treated to be Rs. 750.00 per mensem for the purposes of payment of bonus under section 10 or, as the case may be, under section 11. Section 19 lays down that bonus must be paid in cash within eight months from the close of the accounting year unless there is a dispute in which case it must be paid within a month from the date on which the award becomes enforceable or the settlement becomes operative.

15. Another important provision is to be found in section 23 which, so far as is relevant for the purposes of these cases, lays down that the balance-sheet and the profit and loss account of the employer which is a corporation or a company, audited by auditors duly qualified to act as auditors of companies under sub-section (1) of section 228 of the companies Act, 1956, are produced before an authority, the said authority may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or any other mode. When, however, the authority is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account are not accurate, it may take such steps as it may think necessary to find out the accuracy of such statements and particulars.

Superannuation Scheme and Special Retiring Gratuity Scheme:

16. As I have already mentioned, the points that arise for consideration in this case have to be decided in the light of provisions of the payment of Bonus Act.

The first point which Shri C. L. Dudhia has raised on behalf of the All India Voltas and Volkarts Employees' Federation (hereinafter to be referred to as the Federation) is that amounts paid to officers and employees of the company under the Superannuation Scheme and Special Retiring Gratuity Scheme have to be added to the profits in order to arrive at the gross profits. Ext. W. 1 is a copy of the Voltas management circular No. MG-906/2, dated the 19th February, 1959. Ext. W. 1 is headed "Superannuation Scheme: Special Retiring Gratuity Scheme". It is stated in this circular that the company had decided to start a Superannuation Scheme in term of which it will pay "(a) annually, to the Life Insurance Corporation certain sums of money not exceeding the equivalent of two months salary for each member of the Scheme", and such lump sum contribution on behalf of each member as is agreed upon by him and within such limits as might be fixed on the amount of gratuity that could be absorbed. Participation in this scheme was compulsory for all employees drawing a basic salary of Rs. 850.00 per mensem and optional for all other categories of staff. This amount of Rs. 850.00 was reduced to Rs. 500.00 per mensem by circular No. MG-906/2, dated the 5th March, 1959 (Ext. W. 3). Some of the other terms in the circular of the 19th February, 1959 may also be mentioned. A condition precedent to joining the Superannuation Scheme was laid down as being that each member of the Scheme should "agree in writing not to participate in the annual bonus distributed by the company and be bound by this for the remainder of his service with the company". Under another heading, entitled Special Retiring Gratuity Scheme, it was stated that, "In consideration of members of the Superannuation Scheme agreeing in writing not to participate in the annual bonus distributed by the company, a Special Retiring Gratuity Scheme will be started for the benefit of such employees and they will, thereafter be eligible upon retirement, death or termination of service for any reason whatever, to a Special Retiring Gratuity of such amount and payable in such instalments as the Directors may at their discretion fix, having regard to the amount of bonus the employee would have received in the course of his service.....".

17. Ext. W. 6, is a copy of circular No. MG-906/2 dated the 16th October, 1961. It was stated in the 1st paragraph of the circular that, under the circular of the 19th February, 1959 and the 5th March, 1959, Bonus payment to members of the staff earning a basic salary over Rs. 500/- had been discontinued in lieu of their becoming members of the Superannuation Fund and participating in the Special Retiring Gratuity Scheme. The Superannuation Fund was not referred to in the other paragraphs of the letter but it was stated that those employees, who were receiving basic salary upto and including Rs. 2,250 per month should be given the option to receive in lieu of participation in the Special Retiring Gratuity Scheme, an annual bonus at such rate and of such amount as may be determined by the Board of Directors with an over-riding limit of one and half months basic pay but no annual bonus was payable to employees receiving a salary which exceeded Rs. 2,250 per month and they were compulsorily to be members of the Special Retiring Gratuity Scheme.

18. Shri Dudhia has argued that it appears from a perusal of all the three circulars together that the Superannuation Fund as well as the Special Retiring Gratuity Scheme were both substitutes for bonus and, therefore, they should be treated as bonus. Mr. Palkhiwala has, on the other hand, argued that, whatever may have been the consideration for creation of these funds—that may have been the agreement of members to deprive themselves of bonus,—it is clear that the company was not making payment into the Superannuation Fund or into the Special Retiring Gratuity Scheme of any amount as bonus. So long as the amount is not bonus, it cannot be added back. He has stated that, if bonus had been paid to the employees, that would have been taxable, but the amount paid into the funds were not taxable. He has further contended that a limit has been placed upon payment into the Superannuation Fund so that nothing more than two months' salary could be paid into that fund. Had it been bonus, he has argued, no such limit could have been placed and the amount payable as bonus would have fluctuated with the profits. He has also argued that the amount which can be added back under item 2(a) of the second schedule is bonus to employees. "Employees" has been defined in section 2(13) of the Act. He says that anything paid to an employee under item 2(a) of the Second Schedule can be added back only if it is bonus and not something in lieu of or as a substitute for bonus. He has given an instance. Suppose an employee or officer gives up his claim for bonus in consideration for an agreement to increase his salary or wages.

He asserts that the increment in his salary cannot, in these circumstances, be treated to be bonus. In my opinion, these arguments are valid and must prevail. I may add that a fair reading of the three circulars shows that, whatever may be said about the Special Retiring Gratuity, the company does not appear to have created the Superannuation Fund in lieu of bonus. It rather appears that the Superannuation Fund was created and, as a consideration for the same, the members were required to give up their bonus.

19. Reference may be made to the observations of Shri M. R. Meher in Reference No. (IT) 114 of 1965—*Rallis (India) Ltd., Vs. The Workmen employed in the Head Office and allied offices in Greater Bombay*, published in Maharashtra Government Gazette, Part 1-1, dated the 18th November, 1965, page 3965 at page 3856 as follows:—

"In the calculations filed on behalf of the workmen, it is sought to add to the profits, (a) additional remuneration which has been paid to Directors and higher executives, drawing more than Rs. 1,600 per month at a certain percentage of the profits according to the terms of contracts with them, (b) Contributions to the Superannuation Fund. These items cannot be notionally added to the profits. The Union's argument that they stand on the same footing as bonus and should be added cannot be accepted. In support of his argument Shri Buch relied on quotation from *Palmer's English Co. Law* at page 650, which has no relevance to this proceeding. What is allowed by the Income-tax Act as legitimate expenditure cannot be disallowed under the Bonus formula as laid down in the Act. Besides the Second Schedule to the Act shows that only provision for bonus to employees had to be added to the profits. The term employees is defined in section 13 and does not include higher executives drawing over Rs. 1,600 per month".

Bonus paid to officers:

20. Shri Dudhia has raised another point in this connection. He has submitted that bonus paid in any shape or form to officers drawing a salary of more than rupees one thousand six hundred must also be added back to the profits in order to arrive at the figure of gross profits. His reasoning is that the legislature has made its intention clear by enacting section 12 of the Act which lays down that employees drawing wages or salary of more than seven hundred fifty will be deemed for the purposes of bonus to be drawing only that much. He says that this shows that the legislature did not intend employees to be paid bonus on the basis of their exact wages or salary if that happened to be more than rupees seven hundred fifty. According to him, this gives a clear indication that bonus paid to officers drawing a salary exceeding rupees one thousand six hundred should also be added back to the profits in order to arrive at the gross profits. I am unable to agree. There is nothing in the Act to prevent the Board of Directors from fixing the salary or allowance of any officer at any reasonable figure. There is also nothing in the Act to suggest that the Board of Directors cannot pay any bonus to high officers. It seems to me that the Act has been framed for the benefit of only employees drawing a salary of rupees one thousand six hundred or less. Even so far as those drawing more than rupees seven hundred fifty are concerned, their wages or salaries are to be deemed for the purpose of bonus not to exceed rupees seven hundred fifty. It is only fair that those to be benefited should be called upon to put back in the hotchpot anything which they have already received as bonus so as to be enabled to calculate and draw bonus in accordance with the Act. There is no reason why anything received by what has been described by Shri Palkhiwalla as the top brass should also be added back for the purpose of finding out the gross profits.

21. It will be interesting in this connection to read the observations of the Bonus Commission. In paragraph 12.7 of their report, they have stated:

"We are of the view that for the purposes of the bonus formula, the portion of the available surplus which we have allocated as bonus should be deemed to include bonus to the lower paid supervisory staff and officers..... Having regard to all these considerations, we recommend that in the bonus formula proposed by us the portion of the available surplus allocated for bonus should be deemed to include bonus to employees drawing a total basic pay and dearness allowance (taken together) upto rupees sixteen hundred per month regardless of whether they are "workmen" or non-workmen as defined in the Industrial Disputes

Act or any other relevant Act, with the proviso that the quantum of bonus payable to employees drawing total basic pay and dearness allowance over Rs. 750 per month shall be limited to what it would be if their pay and dearness allowance were only Rs. 750 per month". It will be seen that the whole of these recommendations have been adopted in the Act. The report further goes on:

"As regards officers and supervisory staff drawing over Rs. 1,600 per month it would be open to the company or concern, if it considered necessary, to pay them bonus out of the balance (40 per cent.) of the available surplus left to it under this formula".

There is nothing in the Act to show that the legislature has accepted this recommendation because it has certainly not included it in the Act. No provision has been made for adding back any bonus paid to the higher officers (i.e., those receiving a salary and dearness allowance of more than Rs. 1,600) nor is there any provision that the Payment would be taken to be included in the 40 per cent. of the available surplus which is meant for the company.

Bonus paid to employees in previous years:

22. Both parties have agreed that bonus paid to employees drawing a salary and dearness allowance which does not exceed 1600 during previous accounting years is to be added back. There is a difference between the two parties as to whether bonus for previous accounting years paid to any non-eligible employee i.e., employee drawing a salary and dearness allowance which exceeds 1600 should or should not be added back. The point need not be considered because, in both the accounting years in question, the amount said to have been paid to such employees under this item is said to be nil. Had it been necessary to decide it, I would have held, following my decision on the last point, that bonus paid for previous accounting years to non-eligible employees cannot be added back.

Any other reserve:

23. The next difference between the parties is in connection with what is said to be a provision for bad and doubtful debts. It seems that the company makes such provisions every year but writes off in any one year a certain amount as bad debt if it becomes irrecoverable during the previous accounting year. Mr. Palkhiwalla has argued that the provision can only be taken into consideration for the purpose of being added back if it is held to be a reserve. Reference may be made to sub-section (1) (vii) and (2) (i) (b) of section 36 of the Income Tax Act which lays down that deduction will be allowed for the amount of any debt or part thereof which has been established to have become a bad debt in the previous year. I may also make reference in this connection to the decision of Shri S. K. Sen as presiding Officer of a National Tribunal in the case of the management of Indian Oxygen Ltd., Calcutta Vrs. Their workmen, published in the Gazette of India Part II section 3(ii) dated the 18th February, 1967 at page 414. He has considered the question of doubtful debt reserve in paragraph 10 of the award. He has relied upon sub-section 2 of section 36 of the Income Tax Act for stating that no deduction for a bad debt can be allowed unless the debt or part thereof has been written off as irrecoverable in the accounts of the previous year. He has further held that it may be shown as a provision for doubtful debt in the profit and loss account and not as a reserve but it can never be deducted as an item of expenditure. He has held that a debt which is not proved to have become irrecoverable is to be added back for finding out the gross profits. It seems to me to be quite clear that the provision for bad and doubtful debts, though it is called a provision, is really a reserve for meeting bad and doubtful debts in future. I, therefore, agree that the amount which is kept as a provision for bad and doubtful debts should be added back.

Tax deducted at source:

24. A question was raised whether tax deducted at source on the income on investments should or should not be added back. Both parties have agreed that this should be added back. Hence it is not necessary for me to discuss this point.

Donation:

25. Rebate is allowed on admissible donations under section 38 of the Income Tax Act. According to item 3(b) of the second schedule, 'donation in excess of the amount admissible for income tax' has to be added back. The company has given lists of the donations which it made during the two accounting years in question. There has been some argument before me as to whether the amount

to be left out of consideration under this head is the amount of tax relief only or the admissible donations in their entirety. In my opinion, the words of item 3(b) of the second schedule leave no room for doubt that the entire admissible donations have to be allowed and what is to be added back is only the total of inadmissible donations. I am supported in this decision by the view expressed in the case of Indian Oxygen Limited by Shri S. K. Sen in paragraph 11 of his award. In coming to his conclusion, he has referred to paragraph 19 of the Bonus Commission's report also.

Shri Dudhia has raised one other point in this connection. In the accounting year 1965-66, the company gave a donation of Rs. 1,60,000 to the Maharashtra Housing Board i.e., the Board established by the Government of Maharashtra for building houses, in order to become entitled to the allotment of flats in a structure built by the Board to officers of the company. Shri Dudhia has argued that this donation has been made for the purpose of getting permanent benefit and so it should be treated as capital. In answering this argument, Shri Thacker, who has appeared with Shri Palkhiwala, has, however, rightly said that the flats do not become the property of the company nor does the company acquire any permanent interest in them. The money is gone for good and all that the company gets is that flats in the structure made by the Maharashtra Housing Board are allotted to officers of the company. Had the donation not been made the flats could not be allotted to those officers. In these circumstances, I agree with Shri Thacker that this donation cannot be treated as capital.

Capital Expenditure:

26. There has been a controversy before me about capital expenditure to be added back under item 3(d) of the second schedule.

Shri Dudhia has referred to three items as capital expenditure. The first one is the cost of issue of debentures. Shri Palkhiwala has submitted that the amount under this head cannot be added back. Shri Dudhia has not been able to give satisfactory reasons why the cost of issue of debentures should be added back as capital expenditure. This item is, therefore, disallowed.

Another item which Shri Dudhia has referred to is the cost of dismantling of building and machineries. Shri Palkhiwala has admitted that this expenditure should be treated as capital expenditure and can be added back.

The third item is the cost of getting technical assistants which, in the accounting year 1964-65, stands at Rs. 33,408.00. It has been admitted on behalf of the company that the income-tax officer disallowed this amount and the appellate Asstt. Commissioner confirmed his order. It has also been admitted that no higher court has been approached for a decision that this amount is not capital expenditure. Hence this amount should also be added back as an amount of capital expenditure under item 3(d) of the record schedule. Reference may be made in connection with this item of capital expenditure to paragraph 14 at page 421 of the Gazette publication of Shri S. K. Sen's judgement in the case of the Indian Oxygen Limited.

Development Rebate:

27. Full development rebate is allowed by the Income Tax authorities only if the company concerned shows an appropriation of at least 75 per cent for development. In the accounting year 1964-65, the company gave the figure 19.71 lakhs as the figure of development expenditure. It showed an appropriation of 15.17 lakhs i.e., about 75 per cent for the purpose of Income Tax. Shri Dudhia argued at first that the company should be allowed a development rebate of only 15.17 lacs but subsequently he agreed that the company was entitled to the entire amount of 19.71 lacs as development rebate.

Direct Tax:

28. There has been a great deal of controversy between the parties in connection with direct taxes. I may here quote sub-section (c) of section 8 of the Act:—

“(c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year”;

Shri Dudhia has argued that the tax described in this provision must be the actual income-tax i.e., the tax calculated on the income of the company which

is left to it after distribution of bonus to its employees and the refund of income tax on that bonus. On the other hand, Shri Palkhiwalla has urged that section 6(c) contemplates notional tax because, at the stage when the direct tax has to be calculated, the actual tax cannot possibly be found out. He has pointed out that, under section 19, bonus has to be paid generally, unless there is a dispute, within eight months from the close of the accounting year in question but the actual Income Tax cannot be finalised within a short-time. It has to be decided by the Income-tax authorities and the Appellate Tribunal and the final word can only be given by the Supreme Court. That will take years and the company cannot wait for all those years before distributing the bonus to its employees.

29. I have already out-lined the scheme of the Act. As I have said, the first thing to be done is to calculate the gross profits by adding back the sums mentioned in the second schedule. Deductions have then to be made in accordance with section 6 and the third schedule from the gross profits. It is only then that the available surplus can be found out. Allocable surplus is 60 per cent of that amount. If Shri Dudhia's argument is accepted, it will mean that the process of calculation will be thoroughly up-set. After following the procedure laid down in the Act, one will arrive at the allocable surplus and, by that means, the amount which is to be distributed as bonus. He will then have to calculate the refund of Income Tax which will be permissible on that amount of bonus. Thereafter, he will have to go back and calculate the direct tax which, according to the Act, he should have calculated at a much earlier stage. A perusal of the Scheme and the provisions of the Act leaves no room for doubt that the direct Tax has to be calculated without taking into consideration the amount of refund of Income Tax which will be payable to the company on the bonus which it distributes among its employees. Indeed, the very expression "prior charges" used in section 6 of the Act shows that the amounts deductible under that section are to be deducted before and not after the amount of allocable surplus for distribution of bonus is ascertained. Otherwise, it is difficult to see what the word "prior" denotes.

30. The legal position before the Payment of Bonus Act was passed was firmly established by two decisions of the Supreme Court. I refer to the Associated Cement Companies Ltd., versus their workmen 1959 (I) L.L.J. 664 and Crompton Parkinson (Works) Private Ltd., Bombay and its workmen 1959 (II) L.L.J. 382. Their Lordships laid down that the amount of income tax which could be refunded on payment of bonus by a company to its employees could not be taken into consideration for the purpose of finding out the amount which had to be distributed as bonus. In allocating the percentage of the amount to a company and to its employees, however, the fact should be remembered that the company would get a rebate on the amount of bonus which it distributes among its employees. The Bonus Commission has said in paragraph 12.1 of its report:—

"The fixing of a certain proportion of the available surplus (after meeting the prior charges recommended by us) to be distributed as pouns, subject to a minimum and maximum (coupled with an arrangement for set off and set-on) in the formula which we recommend, would lead to an equitable result; we recommend that this proportion should be 60 per cent; The balance left with the concern would be 40 per cent; and this would be increased by the saving in tax on bonus payable. The aggregate balance thus left with the industry is intended to provide for gratuity and other necessary reserves the requirements of rehabilitation in addition to the provision made by way of depreciation in the prior charges, the annual provision required, if any, for redemption of debentures and return of borrowings, payment of super profits tax, if any, and additional return on capital".

It will be seen that this proportion has been accepted by the legislature and has been implemented in the Act. While fixing the proportion, the commission contemplated that the rebate on bonus payable to the employees would come to the company and would increase the amount allocated to it at 40 per cent. Shri Dudhia has argued that the legislature has not accepted the report of the Bonus Commission *in toto* but has modified the conclusions of the commission at places. This is an admitted position but Shri Palkhiwalla says that the legislature has not made any modification in the recommendations of the commission on this subject. Shri Dudhia has pointed out that the Act has made certain provisions which are against the interest of the employees. For instance, the Bonus Commission did not allow the deduction of development rebate as a prior charge—*vide* paragraph 9.7 of its report—but section 6(b) of the Act allows the deduction of the entire amount by way of development rebate or development allowance.

Another instance which he has given is that the Bonus Commission has recommended in paragraph 11.7, of its report that the return on paid up capital to be allowed as a prior charge in the bonus formula should be at seven per cent and in paragraph 11.13 that the return on reserve should be allowed at four per cent only but the Act has allowed in schedule three [Items (ii) and (iii) in col. 3] 8.5 per cent and 6 per cent respectively. On the other hand, Shri Palkhiwalla has pointed out that there are some serious disabilities for capital according to the Act. For instance, he says that unabsorbed depreciation and carried forward losses are taken into consideration under the Income-Tax Act but they are ignored under the Bonus Act. When a partial relief is given to the company by reason of the tax being calculated at a prior stage and not after taking into consideration the refund of tax on the bonus paid to the employees, there is no reason why it should be deemed that the Act has not implemented the recommendations of the commission in respect of calculation of the direct tax.

31. In my opinion, the provisions of the Act are perfectly clear. They make it manifest that the refund of income tax of bonus paid to employees is not to be taken into consideration for the purposes of calculation of the direct tax. I, therefore, agree with Mr. Palkhiwalla that the direct tax referred to in section 6 of the Act is to be calculated notionally i.e., without allowing deduction for any refund permissible on the amount of bonus paid to the employees.

32. There are several cases in which the Presiding Officers of Tribunals have taken the same view as I have done above. I may refer to the case of Hindustan Lever Ltd., Bombay versus workmen employed under it, Reference (IT) No. 144 of 1966, in which Shri S. Taki Bilgrami, Industrial Tribunal, Maharashtra, has expressed this view. His award has been published in the Maharashtra Government Gazette I-L dated the 24th September, 1966 page 3826. In Malabar Steamship Co. Ltd. versus the workmen employed under it, Reference (IT) No. 28 of 1967 Shri V. A. Nayak, Industrial Tribunal, Maharashtra, Bombay took the same view. His award has been published in the Maharashtra Government Gazette, Part I-L dated the 21st September, 1967 page 3731. In the case of Acme Manufacturing Co., Ltd., Bombay, Shri H. R. Gokhale, Arbitrator, also took the same view. This has been published in Maharashtra Government Gazette, Part I-L dated the 19th October, 1967 page 4155. The same view has been taken by Shri P. Basu of the Sixth Industrial Tribunal, West Bengal, in the case of the Metal Box Co., India Limited versus their workmen. The award has been published in Calcutta Gazette dated the 21st July, 1966 part IC page 610. Relevant discussions are at page 615 and 616.

Dividend Tax:

33. Shri Duthia has argued that dividend tax should not be deducted as a direct tax. He says that the permissible limit of dividend to be declared is 10 per cent and, if a company declares a higher dividend e.g., 15 per cent as this company has done, $7\frac{1}{2}$ per cent tax is payable on the excessive dividend. Hence his contention is that this is a tax on excessive dividend and not on income, profits and gains. Mr. Thacker has, however, argued that no dividend tax is payable by a company if it makes no income, profit or gain although it may declare a dividend of more than 10 per cent. It seems to me that, whatever may be the basis for imposing this tax, there can be no doubt that the tax is leviable on the income, profits and gains. That being so, it is manifest that the amount of dividend tax is a direct tax. Reference may be made to the award in the case of Indian Oxygen Limited versus its workmen. This point has been dealt with in paragraph 20 of the award, at page 424 of the gazette report.

Salesman:

34. There has been a serious controversy in this case on the question as to whether some salesmen of the company are entitled to receive bonus. It seems that salesmen are of two classes. One class of salesmen receives salary, dearness allowance etc., like other employees. Another class of salesmen receives commission at a certain percentage on the amount of total sale of articles marketed by the company. A dispute arose in the accounting year 1956-57 as to whether salesmen of this class were entitled to bonus. As stated in paragraph four of the statement of claims filed by the Federation in the case relating to 1964-65, the dispute was referred as reference (IT) No. 212 of 1958 to Shri M. R. Meher as

the Presiding Officer. His award has been published in Maharashtra Government Gazette Part I-L dated the 26th February, 1959, at page 890 in the matter of Bonus for the year 1956-57. I have already stated that this award has been reported also in 1959 I.C.R. 534. Shri Meher decided that Salesmen of this class were not entitled to receive bonus, firstly because their clerical work was not substantiated and, secondly, because sharing in the profits as they did by receiving commission, they were not entitled to share in the profits, again by way of being paid bonus. The matter went up to the Supreme Court and the decision of that Court has been reported as *Voltas Ltd. versus its workmen 1961 (1) L.L.J. 323*. Wanchoo J. (as he then was) observed with reference to this point as follows:

"So far as salesmen are concerned, the tribunal has examined the relevant decisions of other tribunals and has come to the conclusion that salesmen who are given commission on sales are not treated on par with other workmen in the matter of bonus. It has also been found that the clerical work done by salesmen is small and incidental to their duty as such; salesmen have therefore been held not to be workmen within the meaning of the Industrial Disputes Act. The tribunal has pointed out that the commission on an average works out at about Rs. 1,000 per mensem in the case of salesmen and therefore their total emoluments are quite adequate. Besides, the salesmen being paid commission on the sales have already taken a share in the profits of the appellant on a fair basis and therefore there is no justification for granting them further bonus out of the available surplus of profits".

35. Shri Palkhiwalla has argued that salesmen are bound by the principle of *resjudicata* by virtue of the above decision and that they can not now be held entitled to receive bonus. On the other hand, Shri Dudiha has urged three points. His first point is that salesmen receiving commission cannot be treated on a basis different from other salesmen who are paid salary and dearness allowance. The second point is that the decision cannot hold good now because the company has started many other lines of business and the salesmen have to have plenty of technical knowledge in order to do their work properly. The last point is that the above decision cannot be applied because the definition of the word 'employee' in the Payment of Bonus Act is different from the definition of workmen in the Industrial Disputes Act.

36. The facts on which the first point has been raised by Shri Dudiha were present at the time of the decision of the earlier case also. The Supreme Court stressed the fact that, by receiving bonus, the salesmen shared in the profits and they could not be allowed to take another share in the profits by being paid bonus. The facts continue to be the same and this point can not, therefore, be allowed to be re-agitated.

37. Shri F.A.P.D. 'Souza, President of the Federation, and a salesman of the company receiving commission, has sworn an affidavit on 1st March, 1968. It has been filed as Ext. W9. Shri B. L. Nagandhi has sworn a counter affidavit on 5th March, 1968 and the management has filed it on the 6th March, 1968. It has been marked as Ext. M18. Shri F.A.P.D' Souza has then filed another affidavit in reply which he swore on the 6th March, 1968. In both his affidavits, Shri D' Souza has asserted that the company has started various new lines of business, that salesmen of the company have to have technical knowledge in order to carry on their work and that there is no difference in the work of this class of salesmen and the other class of salesmen who receive salary and dearness allowance instead of commission. Shri Nagandhi has stated that the work of salesmen of the company has not changed, that some salesmen are employed by the company on fixed salaries but without commission and salesmen of that class are entitled to bonus, and that salesmen working on commission basis receive very large and substantial emoluments, some of them getting as much as rupees forty thousand to fifty thousand per annum. He has annexed to his affidavit a chart showing the names of twelve salesmen, giving details of the commission which they received in the course of seven years from 1959-60 onwards. The name of Shri F.A.P.D'Souza in the third in the list. He appears to have received Rs. 14,807.69 as commission in 1964-65 and 21,716.53 as commission in 1965-66. Shri D' Souza has said that the names of those salesmen who received rather low commissions have not been given by Shri Nagandhi but the fact remains that there is a substantial number of salesmen who receives bigger commissions than those referred to in the judgement of the Supreme Court in the previous case. I am unable to accept that the salesmen working on commission have now to acquire technical knowledge of a kind which they did not have to acquire in 1956-57. I do not think, therefore, that they can be allowed to go against the judgement in the previous case which was against them.

So far as the third point is concerned, there is no substantial difference in the definition. The definition of workman in the Industrial Disputes Act is to be found in section 2(s). It reads:—

“Workman” means any person (including an apprentice) employed in any industry to any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied”. I need not quote the rest.

38. Section 2(13) of the payment of Bonus Act says as follows:—

(13) “employees means any person (other than an apprentice) employed on a salary or wage not exceeding one thousand and six hundred rupees per mensem in any industry to do skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied”.

39. It will thus be seen that the only words which have been added in the definition of employee in the Payment of Bonus Act are at one stage “employed on a salary or wage not exceeding 1,600 rupees per mensem” and, at another stage, “managerial, administrative”. It has not even been argued by Shri Dudhia that salesmen working on commission come within the category of managerial or administrative workmen and as such they are employees. The addition of the other words is not of any consequence. It is clear therefore that no effective change has been made in the definition so as to bring the salesmen working on commission within the definition of employee if they were out of the definition of workmen in the Industrial Disputes Act.

40. All the three points raised by Shri Dudhia fail and my conclusion is that the salesmen working on commission are bound by the principles of *resjudicata* and they cannot now claim that they are entitled to bonus.

41. It appears that there was once an agreement between the apprentices, erector trainees and temporary workmen on one side and the company on the other and they were paid bonus according to the agreement. The parties are, however, to be governed now by the Payment of Bonus Act. The question, therefore, whether they are now entitled to receive bonus to be decided on that basis.

Apprentices and Erector Trainees:

42. Shri V. S. Nadkarni, General Secretary of the Federation, has sworn an affidavit on the 29th February 1968. It has been filed as Ext. W8. It has been stated therein that the apprentices and particularly those who have completed more than one year of service are not mere trade learners but regular workmen like other workmen, that there was an agreement between the company and the federation that apprentices and erector trainees would be paid bonus at half the rates during the second and third year of their terms that this bonus was being paid by the company each year from 1957-58 upto 1963-64 but payment of bonus to them has been completely stopped from the year 1964-65. Shri R. Samuel Raj who was the principal of the Technical Training School of the Company at Thana until December, 1967, has sworn an affidavit on the 1st March, 1968 in reply to the affidavit of Shri Nadkarni. This is Ext. M11. He has said that Shri Nadkarni is not competent to assert the facts which he has asserted, that the company periodically appoints apprentices and gives them letters of appointments when each of them is also required to sign a bond among other things to continue in the service of Voltas for the minimum period of five years on satisfactory completion of his training, that the letter of appointment clearly says that the apprentices are not entitled to bonus, that the period of apprenticeship is three years and that the duties vary during the three years of apprenticeship. On the 4th March, 1968, Shri Mehendale swore an affidavit and said that a sum of Rs. 8.72 lacs was spent during the accounting year which ended on the 31st August, 1965 and a sum of Rs. 10.91 lacs was spent in the next accounting year in giving training to the apprentices in the company's Apprentice Training School at Thana. This was filed as Ext. M14. Shri Nadkarni has sworn another affidavit on the 4th March, 1968 and it has been filed as Ext. W12. He has stated that he himself has worked as an apprentice with the company and he is familiar with the work done by the apprentices, that apprentices working in the workshop work on regular production/service jobs, that in the second year of their training at Thana apprentices are given jobs for turning out regular products or parts like other works which were useful to the company. This affidavit makes it quite clear that the apprentices are in training not only in the first year of their training but also in the second and third years. It is certainly necessary

that apprentices should be asked to do useful work and, when they more or less approach completion of their apprenticeship period, they may be asked to do really responsible work. Unless that is done, their training cannot be completed. None the less, they cannot be described to be workmen during their training period. They continue to be apprentices until their pre-determined and agreed period of training is over. Although an apprentice is included within the definition of workmen under the Industrial Disputes Act and this may have been the reason why the company previously agreed to allow apprentices half bonus during the second and third years of their training—an apprentice is excluded expressly from the definition of employee under the Payment of Bonus Act. It is thus clear that apprentices are not entitled to receive any bonus.

Erector trainees appear to be in the same position. Before the company takes them in for training, they are asked to execute bonds agreeing to serve the company for a minimum period of three years after successful completion of their service. It is quite possible—and, indeed, expected—that they would be given more and more responsible work during the course of their training but that cannot convert them from the position of apprentices to that of workmen. Hence, these trainees are also entitled to bonus.

Temporary Staff

43. Shri Dudhia has not pressed the question of payment of bonus to the temporary staff. In fact, he has stated that the only part of question No.(c) which he presses is the part relating to apprentices and erector trainees. I hold, therefore, that no bonus is payable to temporary staff.

44. Both parties filed joint charts at the end of the hearing of the two cases, showing the figures which will be arrived at on proper calculation for bonus. The difference between the company and the federation has been clearly indicated. In connection with each item, the charts show the difference between the parties and wherever there is a difference, what will be the figure added or deducted according to which party. I proceed now to give my own charts in accordance with my findings above on the basis of the joint charts. The joint chart for the accounting year 1964-65 is Ext. MW1:

Sl. No.	Description	Sub-total	Total	Remarks
Rupees in lacs				
1	Net profit as per the profit and loss account.		96.80	According to both parties.
2	According to item No. 2 of the second schedule, add back provisions for :			
(a) (i)	Bonus to employees	34.98		Do.
(ii)	Bonus to non-eligible employees.	Nil.		The Federation has claimed that 1.52 lacs should be added under this head but I have disallowed that.
(b)	Depreciation	22.68		According to both parties.
(c)	Direct taxes including provision if any for the previous accounting year.	141.00		Do.
(d)	Development Rebate	Nil.		Do.
(e)	Any other reserve :			
	Provision for bad and doubtful debts :	0.20		
	Less : Bad-debts written off :	0.16	0.04	This has been claimed by the Federation and I have held that this amount is to be added back.
(f)	Tax deducted at source on income from investments.		0.74	According to both parties

Sl. No.	Description	Sub-total	Total	Remarks
Rs. in lacs				
3	In accordance with item No. 3 of the second schedule, add back also:			
	(a) (i) Bonus paid to employees in respect of previous years.	0.52		According to both parties.
	(ii) Bonus paid to non-eligible employees.	Nil.		Do.
	(iii) Amount under Superannuation Scheme.	Nil.		The Federation has claimed addition of 7.18 lacs but that has been disallowed.
	(iv) Special retiring gratuity	Nil.		The Federation has claimed addition of 0.45 lacs but I have disallowed it.
	(b) Donation in excess of the amount admissible for income-tax.	0.03		According to both parties.
	(c) Annuity	Nil.		Do.
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural tax).	0.26		Cost of dismantling machinery. Admitted by company as capital expenditure.
		0.33		This is the cost of technical know-how-fees. I have held that this amount is capital expenditure and has to be added back. The company did not agree.
		0.03		Loss on sale of fixed assets. Not admitted by company.
	(e) Losses of or expenditure relating to, any business situated outside India.	Nil.		According to both parties.
4	According to item 4 of the second schedule, add also income, profits or gains (if any) credited directly to reserves, other than :			
	(i) Capital receipts and capital profits (including profits on the sale of capital assets on which depreciation is not allowed on income or agricultural income-tax).	Nil.		Do.
	(ii) Profits of, and receipts relating to any business situated outside India.	Nil.		Do.
	(iii) Income of foreign concern from investment outside India.	Nil.		Do.
	(iv) Total of item Nos. 2, 3 & 4		200.61	
5	Total of all the above columns		297.41	
6	According to item 6 of the second schedule, deduct :			
	(a) Capital receipt and capital profits (other than profits on sale of assets on which depreciation has allowed for income-tax or agricultural income-tax.	Nil.		Do.

Sl. No.	Description	Sub-total	Total	Remarks
		Rupees in lacs		
	(b) Profits of, and receipts relating to any business situated outside India.	Nil.		According to both parties.
	(c) Income of foreign concern from investment outside India.	Nil.		Do.
	(d) Expenditure or losses (if any) debited directly other than :—			
	(i) Capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not allowed for income-tax or agricultural tax).	Nil.		Do.
	(ii) Losses on any business situated outside India.	Nil.		Do.
	(e) In the case of foreign concern proportionate administrative (over-head) expenses of head office allocable to Indian business.	Nil.		Do.
	(f) Refund of any direct tax paid for previous accounting years and excess provision, if any of previous accounting year relating to bonus, depreciation, taxation or development rebate or development allowances, if written back.	Nil.		Do.
	(g) Subsidy, if any received from Government or from anybody corporate established by any law for the time being in force.	Nil.		Do.
7.	Gross profits for the purpose of bonus		297.41	Because there is nothing to be deducted under item No. 6.
8.	Deductions according to section 6 of the Payment of Bonus Act :			
	(a) Depreciation admissible under the Income Tax Act.	21.76		According to both parties.
	(b) Development rebate	19.38	41.14	Do.
			256.27	
(c)	Direct taxes :			
	(i) Income-tax as per schedule I calculated as per Income Tax Act and according to Sec. 6(c) of the Payment of Bonus Act.	140.76		This amount is allowed in accordance with the claim of the company. The Federation's plea that income-tax should be calculated after deduction of income-tax rebate on bonus paid to employees has not been accepted
	(ii) Sur-tax as per schedule II calculated according to company's (profit) Sur-tax Act, 1964.	21.29	162.05	
			94.22	

Sl. No.	Description	Sub-total	Total	Remarks
Rupees in lacs				
9.	Deduction according to the III schedule of the Payment of Bonus Act.			
	(i) 8.5% return on paid up capital of Rs. 255 lacs.	21.67	35.90	According to both parties.
	(ii) 6% return on reserves of 237.11 lacs.	14.23		
			58.32	
10.	Available surplus	58.32		
11.	Allocable surplus i.e. 60% of item No. 10.	38.99		
12.	Rate of bonus to be paid on the basis of the annual wages of 215.74 lacs.	16.22%		

The company has already paid 16.19% as bonus. It will now have to pay 0.03% more as bonus for 1964-65.

45. I may now give my own chart in accordance with my findings on the basis of the joint chart filed by the parties for the accounting year 1965-66. The joint chart for this accounting year is Ext-MW2:

Sl. No.	Description	Sub-Total	Total	Remarks
1.	Net profit as per the profit and loss account.		81.86	According to both parties.
2.	According to item No. 2 of the second schedule, add back provisions for :			
	(a) (i) Bonus to employees	32.91		Do.
	(ii) Bonus to non-eligible employees.	Nil.		The Federation has claimed 1.59 lacs but I have disallowed that.
	(b) Depreciation	38.59		According to both parties.
	(c) Direct tax including provision if any for the previous accounting year.	125.50		
	(d) Development Rebate	9.00		Do.
	(e) Any other reserve :			
	Provision for bad and doubtful debts :	0.79		This has been claimed by the Federation and I have held that this amount has to be added back.
	Less : Bad debts written off :	0.19	0.60	
	(f) Tax deducted at source of income from investment.	Nil.		According to both parties.
3.	In accordance with item No. 3 of the second schedule, add back also :			
	(a) (i) Bonus paid to employees in respect of previous accounting years.	Nil.		Do.
	(ii) Bonus paid to non-eligible employees.	Nil.		Do.

Sl. No.	Description	Sub-total	Total	Remarks
	(iii) Amount debited under super-annuation scheme.	Nil.		The Federation has claimed addition of 7.64 lacs but that has been disallowed.
	(iv) Special Retiring Gratuity	Nil.		The Federation has claimed addition of 0.14 lacs but I have disallowed it.
	(b) Donation in excess of the amount admissible for Income-tax.	0.48		As explained in Ext-M.16 total donation is 2.48 lacs out of which admissible limit is 2 lacs under sec. 88 of the Income Tax Act. One lac has been donated to Nehru Memorial Fund which cannot be taken into account. Hence non-admissible donation amounts to 0.48 lacs.
	(c) Capital expenditure (other than capital expenditure on scientific research which is allotted as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural tax):			
	(i) Cost of dismantling of machinery.	Nil.		Negligible according to Federation.
	(ii) Technical know-how	Nil.		According to both parties.
	(iii) Expenses incurred for issue of debentures.	Nil.		Do.
	(d) Losses on expenditure relating to any business situated outside India.	Nil.		Do.
4.	According to item 4 of the second schedule, add also income, profits or gains, if any, credited directly to the reserves, other than :			
	(a) Capital receipts and capital profit (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax).	Nil.		Do.
	(b) Profit of, and receipts relating to any business situated outside India.	Nil.		Do.
	(c) Income of foreign concerns from investments outside India.	Nil.		Do.
5.	Total of items 1, 2, 3 and 4		288.94	
6.	According to item 6 of the second schedule, deduct a, b, c, d, e, f and g.	Nil.		Do.
7.	Gross profits for the purpose of bonus (item No. 5 minus item No. 6).		288.94	
8.	Deduction according to section 6 of the Payment of Bonus Act:			
	(a) Depreciation admissible under the Income-Tax Act.	35.58		Do.
	(b) Development Rebate	11.49	47.07	Do.
			241.87	

Sl. No.	Depreciation	Sub-total	Total	Remarks
<i>(c) Direct Taxes :</i>				
(i)	Income tax as per schedule I calculated according to Income Tax Act and in accordance with sec. 6(c) of the Payment of Bonus Act.	133.55		This amount is without taking into consideration rebate on bonus paid to employees.
(ii)	Sur-Tax as per Schedule II calculated according to Company's (Profit) Sur-Tax Act, 1964.	13.12	146.67 95.20	This amount is without taking into consideration rebate on bonus paid to employees.
9	Deduction according to the Third Schedule of the Payment of Bonus Act.			
(i)	8.5 % return on paid-up capital of 255 lacs.	21.67		According to both parties.
(ii)	6% return on reserves of 295.66 lacs.	Rs. 17.74	39.41	
			55.79	
10	Available surplus		55.79	
11	Allocable surplus 60% of item 10		33.47	
12	Rate of bonus to be paid on the basis of the annual wages of 249.22 lacs.	13.43%		

The company has already paid the bonus of 13.13%. It has, therefore, to pay the balance of 0.30% further as bonus.

In the result, my award on point (A) is that the company is liable to pay its employees a further bonus of 0.03% for the accounting year 1964-65 and a further bonus of 0.30% in respect of the accounting year 1965-66. My award on point (B) is that salesmen employed by the company on commission basis are not entitled to bonus for either of the two years in question. My award on point (C) is that the apprentices, erector trainees and temporary staff are not entitled to any payment of bonus. They may have been paid some amount as bonus in previous years but, according to the Payment of Bonus Act, they are no longer entitled to any such payment. This may be submitted to the Central Government under section 15 of the Industrial Disputes Act.

[No. 17/6/66-LRIV.]

(Sd.) KAMLA SAHAI,
Presiding Officer.

New Delhi, the 16th May 1968

S.O. 1823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Jabalpur, in the Industrial Dispute between the employers in relation to the State Bank of India, Durg (M.P.) and their workmen, which was received by the Central Government on the 2nd May, 1968.

**CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT,
JABALPUR**

Dated April 19, 1968

PRESENT

Sri G. C. Agarwala.—Presiding Officer.

CASE REFERENCE No. CGIT/LC(R) (121) of 1967

PARTIES:

Employers in relation to The State Bank of India, Durg (M.P.)

Vs.

Their workmen represented through the Assistant General, State Bank of India and Subsidiary Bank Employees Union C/o, State Bank of India, Raipur (M.P.)

APPEARANCES :

For the Bank—S/Shri Sakargayan and M. M. L. Gautam, Sub-Accountant, State Bank, Jabalpur Branch.

For Workmen—S/Sri Rishi Kumar Dubey, D. D. Mishra and S. D. Phadke.

INDUSTRY: Bank

DISTRICT: Durg (M.P.)

AWARD

The Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication by Government Notification No. 51(27)/65-LRIV dated 31st July 1967:—

Matter of Dispute

Whether the termination of the services of Shri T. K. Shrivastava, Cashier, State Bank of India, Durg is justified? If not, to what relief is he entitled?

2. Shri T. K. Shrivastava, a matriculate, was appointed initially as a temporary Cashier in the Drug Branch of the Bank on 7th September, 1964. On 1st November, 1964, he was appointed on a probationary period of six months. It is not disputed that during the temporary period of his service from 7th September, 1964 to 1st November, 1964 his conduct had been on the whole satisfactory. According to the Bank, after he was placed on probation there had been various laches on his part and his services were terminated by termination order dated 25th March, 1965 before the expiry of the full probationary period. He was, however, paid one month's wages in lieu of notice. The Bank purported to exercise this power by reason of a clause in the letter of appointment as also by the power conferred by paragraphs 495 and 522(i) of All India Industrial Tribunal Bank Disputes Award, commonly known as Sastry Award and adopted by the other award, commonly known as Desai Award. The State Bank of India and Subsidiary Bank Employees Union, Raipur, took up the dispute challenging the termination as *mala fide* and which in due course resulted in this reference. The stand taken by the Union was that the then Agent of the Bank Sri C. N. Murty was hostile to Union activities and exercise pressure on temporary, probationary, and other junior employees not to take part in union activities. Sri Shrivastava, however, had the audacity to become member of this union even during his probationary period. There was shortage of cash in the end of 1964-1965 and at the instance of Sri Shrivastava, the Union pressed for a thorough probe. This incurred further displeasure of the Agent who vindictively terminated the services of Sri Shrivastava. He was served with two mandates for misconduct, one dated 8th February, 1965 (Ex. E/1) for shortage of Rs. 390/- and it was shelved. Another memo dated 18th March, 1965 (Ex. E/2) was again served requiring explanation on six counts within twenty-four hours. Sri Shrivastava wanted more time which was denied and before his explanation could reach the hands of the Agent, which he transmitted through the Union, his services were terminated. It was denied that any appointment letter having a clause for termination during probation was at all issued. It was further alleged that the Bank had no right to terminate the services of Sri Shrivastava under cls. 495 and 522(i) of the Sastry Award inasmuch as the termination was on grounds of misconduct and no disciplinary proceedings or enquiry had been conducted. It was also alleged that the provisions of Sastry and Desai Awards stand modified by a Bi-partite agreement between the Bank and the Union of the employees. It was further contended that the Bank had no right to terminate the services till the expiry of the full period of probation. On pleadings of the parties, the following additional issues were framed in the case:—

Additional Issues

1. Whether the Bank had a right under the Sastry and Desai Awards and the terms of appointment to terminate the services without assigning any reason?
2. Whether the Desai Award stands modified by Bi-partite agreement in this respect?
3. Whether the discharge was *mala fide*, capricious and discriminatory?
4. Was it punitive and amounts to dismissal?
5. Was the workman concerned victimized for trade union activities?

Findings:—

Issue No. 2:—Except for alleging that there was a Bi-partite agreement in para 2 of the rejoinder no attempt has been made to substantiate the plea. No such Bi-partite agreement has been filed. There were four witnesses examined and two of them Sri V. B. Karia (W.W.2) is Branch Secretary and Treasurer and Sri S. C. Sengupta (W.W.4) is the Assistant Secretary of the main Union at Raipur. None of them stated anything about the existence of any Bi-partite agreement. The plea is rejected and the issue is answered in negative.

Issue No. 1.—The Sastry Award defines a probationer in paragraph 508 as "an employee who is provisionally employed to fill a permanent vacancy or post and has not been made permanent or confirmed in service." Paragraph 495 among other things states that "probationers after the expiry of the period of six months should be deemed to have been confirmed, unless their services are dispensed with on or before the expiry of the probation. We further direct that on a candidate's appointment as a temporary employee, a probationer or a permanent member of the staff, the Bank shall give him a written order specifying the kind of appointment....." Paragraph 522 deals with procedure for termination of appointment. Under Clause 1, it states that the "employment of a permanent employee may be terminated by 3 months' notice or on payment of three months' pay and allowances in lieu of notice. The services of a probationer may be terminated by one month's notice or on payment of a month's pay and allowances in lieu of notice. The above provision obviously deals with the right of discharge of the Bank in respect of permanent and probationary employees. The provisions of the Sastry Award were adopted by the Desai Award in paragraph 18.28. The question whether under these provisions, the Bank can exercise a right of discharge over and above the terms of the appointment letter is a matter which will be discussed elsewhere. These provisions undoubtedly give a right. But the right of discharge even though conferred by the Bank Awards is subject to the general restriction that it must be exercised *bona fide* without any motive of victimisation. If it is colourable exercise of power and the conduct had been *mala fide* in spite of the powers conferred under Standing Orders or the Bank Awards or even under contract, the Tribunal would be entitled to go into the question. The question has been specifically considered by the Hon'ble Supreme Court in *Chartered Bank, Bombay Vs. Chartered Bank Employees' Union* and another reported in 1960 (II) LLJ p. 222. The *bona fides* in every case are essential. It must, therefore, be held that if the Bank exercised the power in a *bona fide* manner under the Sastry and Desai Awards, the Bank could terminate the services even before the expiry of the period of probation. The stand taken by the Union that the full period of probation must be allowed to run out is not borne out by the language of the relevant provisions quoted above in the Sastry Award. If the probation has not been satisfactorily rendered, the Bank obviously had a right to terminate the services without waiting for the full period of probation. The case, *Express Newspapers, Ltd., Vs. Labour Court, Madras*, and another reported in 1964 (I) LLJ p. 9 is not relevant to the point inasmuch as the appointment letter had specifically stated that the period of probation shall be six months and the employers had not reserved a right to terminate the services earlier. It was because of this reason that their Lordships of the Supreme Court made the following observation:—

"There can, in our opinion, be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months' period the employer can either confirm him or terminate his services because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer."

In the instant case, the Bank awards which govern the rights of the parties have conferred a right on the Bank to terminate the employment earlier. Further the termination in that case was set aside on a finding that the management's action was not *bona fide* and amounted to victimisation which is not the case here. The Bank has also exercised the power under the terms of appointment letter. The original appointment letter is not on record. Sri Shrivastava stated that he did

not receive any such appointment letter which is difficult to believe. He admitted that he got an appointment letter when appointed temporarily. There is no reason why he would not have been given an appointment letter when appointed on probation with effect from 1st November, 1964. Paragraph 495 of the Sastry Award contains a specific direction that the Bank shall give a written order of appointment continuing terms of service. Such an appointment letter must have been issued in the ordinary course. Sri S. K. Khare (W.W.3) who was also a probationer admitted that he got a letter of appointment. In this case also such a letter of appointment must have been issued. Sri Murty the then Agent (E.W.1) stated that appointment letter in duplicate was prepared and sent to Sri Shrivastava, the duplicate having his signature is not to be found in the file of the Bank. After discovering the fact he reported the matter to the Head Office. He filed the office copy (Ex. E/3)). There is no reason to doubt the statement of Sri Murty on the point. It appears that the appointment letter has been surreptitiously removed from the file. By the terms of appointment as contained in the appointment letter, services of Sri Shrivastava could be terminated earlier. It is, therefore, held that both under the Bank's Awards and terms of appointment, services of Sri Shrivastava could be terminated earlier during the probationary period.

Issues No. 3 and 5.—The plea taken that Sri Shrivastava was an active member of the Union is wholly a flimsy ground. He stated that he used to collect subscription for the Union and Sri Murty asked him to discontinue doing this work. Sri Murty has denied it. There was no point Sri Murty for the matter or that on the part of the Bank to check probationers and temporary employees from doing union work when they could not check the permanent employees. After all, a probationer is only on probation for a period of six months and nothing tangible could be achieved by deterring him to take part in union activities. Another probationer, workman's witness Sri S. K. Khare (W.W.3) admitted that while he was on probation he was not asked by Sri Murty not to do union work. He became a member of the Union after his probationary period was over. His statement as also of Sri V. B. Karla (W.W.2) that Sri Murty asked Sri Shrivastava not to do union work is most unconvincing. Sri Murty could not have been so indiscreet as to give out his mind in presence of other employees. There is nothing in writing to indicate that any active part was taken by Sri Shrivastava even if it be assumed that he was a member of the Union before the termination of his services. It is all a cock and bull story which does not inspire confidence in the least.

Issue No. 4.—This in fact is the only important point which needs serious consideration. Before terminating his services by letter dated 25th March, 1965 (Ex. W/2) in which no reasons were assigned, the admitted position is that there were two memos served on Sri Shrivastava for reply. One is dated 8th February, 1965 which mentioned the fact that "while counting Note packets checked by you a shortage of Rs. 390/- was found." He was asked to explain if the packets were actually checked by him and if so how such a large shortage took place. Evidently, no action was taken on this memo as Sri Shrivastava was allowed to continue thereafter. Another memo dated 18th March, 1965 by reason of which his services were terminated runs as follows:—

- (i) On 21st November 1964 you were asked to take the local clearing. In the evening you reported loss of a cheque handed over to you by the Bank of Maharashtra Ltd. Obviously you were careless in the discharge of the duty allotted to you. You were asked to submit an explanation for this which you have so far not submitted.
- (ii) On 18th September 1964 there was a shortage of Rs. 100/- in Nickel whole rupees handled by you.
- (iii) On 15th January, 1965 a person tendered a challan for Rs. 12.68. He gave you Rs. 15.68 through oversight. You did not complete the denominations column in your Cashier's scroll although for so many other receipts you did fill in the details. You noticed that you received Rs. 3/- excess from the person. When the Head Cashier asked you why the details were not filled you said you forget to fill them. Subsequently after verification of your cashier was found that you had Rs. 3/- in excess which was refunded to the tender. Your intention in not filling the details was obvious.
- (iv) On 20th January, 1965 a remittance of Treasure was to be sent to Raipur. You were asked by the Head Cashier to be present at the Bank at 6-30 A.M. whereas you attended office at 8-10 A.M.
- (v) You are in the habit of altering figures on receipted challans without the knowledge of the Supervising Staff.

- (vi) Recently a soiled note remittance was sent to the Reserve Bank of India, Nagpur, there were heavy shortages in the remittance. Most of the packets checked and verified by you contained the shortages. You were given a Memorandum to explain how the shortages have recurred. So far you have not replied to the Memorandum which denotes you are inclined to disregard your superiors.

Please submit your explanation within 24 hours for all the above shortcomings." Shri Shrivastava was required to reply within 24 hours. Admittedly, no reply was given within this time. Sri Shrivastava stated that he wanted more time and took an application for extension of time to the Agent, Sri Murty, but he refused to accept the application dated 19th March, 1965 (Ex.W/1). Sri Murty has denied it. If he refused to accept the application for time Sri Shrivastava could have sent it by registered post or through his union as he claims to have done so for the reply dated 24th March, 1965 (Ex.W/6). According to Sri Murty he called Sri Shrivastava for a reply but he remained silent. I believe him on the point. Sri Murty has further stated that he did not receive any communication from the Assistant Secretary of the Union, Sri Sengupta, dated 21st March, 1965, office copy of which is Ex.W/7. The office copy seems to have been faked up for the purpose of this case. Sri Sengupta could not explain why he did not send the original by registered post. The reply Ex.W/6 dated 24th March, 1965 to the memo which Sri Shrivastava claims to have sent and curiously through the union, if at all sent which is denied by Sri Murty, was subsequent to his termination of service. The facts, therefore, remain that he was asked to explain for certain irregularities as contained in memo dated 18th March, 1965 and since he failed to explain within the time allowed and for which he had not demanded any further time, the Bank in bona fide exercise of its power of discharge could terminate his services before the full period of probation. The fact that the six counts for which explanation had been demanded could be misconduct, if proved, and the Bank could have held disciplinary proceedings, is of little consequence. Either of the two courses were open to the Bank, namely to discharge the employee or to charge-sheet him, hold a departmental enquiry and then to dismiss him. There is no malafides on the part of the Bank if it chose to take the easier course and which operated to the advantage of the employee, as no stigma by mere discharge is attached to the employee's conduct. There are two Supreme Court cases on which the Union has placed specific reliance. Assam Oil Co. case reported in 1960 (I) LLJ p. 587 is distinguishable by the fact that the employee in that case was not on probation but had been appointed permanently and while discharging her services, it had been stated that her conduct was not satisfactory. There was also evidence that her association with the union weighed with the mind of the employers in terminating the services of Miss Scott. That case, therefore is no parallel. The next case which is a recent one Utkal Machinery Ltd. Vs. Miss Santi Patnaik reported in 1966 (I) LLJ p. 398 was again decided on the malafide intention of the employers. In the first place there was a finding that there was no proof that Miss Santi Patnaik was appointed on probation. In the second place, the termination was found to be malafide and punitive as the real reason was something different than made to appear. The employers even did not disclose the reason before the Labour Court. As such they had not established their bonafides. In the present case, the employers have established the bonafides by placing facts that although the probationer was given time to improve, he failed to do so and therefore his services were terminated. It is, therefore, held that the termination was not punitive and did not amount to dismissal.

Decision:—

The result is that there is no merit in the dispute and services of Sri Shrivastava were rightly terminated. He is not entitled to any relief. No order for costs.

(Sd.) G. C. AGARWALA,

Presiding Officer.

19-4-1968.

[No. 51/27/65-LRIV.]
S.O. 1824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur in the Industrial Dispute between the employers in relation to the Punjab National Bank Ltd., New Delhi and their workmen, which was received by the Central Government on 2nd May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

Dated April 19, 1968

PRESENT:

Sri G. C. Agarwala—Presiding Officer.

CASE REF. No. CGIT/LC(R) (115) of 1967

PARTIES:

Employers in relation to The Punjab National Bank Limited, New Delhi.

Vs.

Their workmen represented through the President, M.P. Bank Employees Association, Jabalpur.

APPEARANCES:

For Employer the Bank.—Sri R. P. Raizada, Staff Officer.

For workmen.—Sri P. N. Sharma, President of the Association.

INDUSTRY: Bank.

DISTRICT: Delhi.

AWARD

By Notification No. 51/55/66/LRIV, dated 7th June, 1967/17 Jyaistha 1889, the Ministry of Labour, Employment, and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference, to this Tribunal for adjudication:

Matter of Dispute

Whether the management of the Punjab National Bank Limited, New Delhi, is justified in not fixing the pay of Shri R. P. Sharma at Rs. 85/- per month as per the directions contained in Para 537 of the Sastry Award, on his transfer from Mandsaur Branch to Bhopal Branch of the Bank? If not, to what relief is the workman entitled?

2. The admitted position is that Sri R. P. Sharma was appointed as a temporary Godown Keeper on a salary of Rs. 73/- p.m. at Mandsaur Branch of Punjab National Bank Ltd., to be hereinafter called the Bank, on 1st January 1960. His temporary appointment was continued to be extended in instalments of three months as would appear from Ext.E/2 to E/9. He executed service agreements also at Mandsaur (Ex.E/20 and Ex.E/21). He earned his annual increments and was drawing Rs. 81/- in June, 1962. While at Mandsaur at his own request he had been doing and learning clerical work also. He applied for 12 days leave on 29th May 1962 and he was informed by letter dated 2nd June, 1962 (Ex.E/1) that 12 days privilege leave from 4th June 1962 to 15th June 1962 was sanctioned. He was, however, informed that his temporary appointment would come to an end on expiry of leave on 15th June, 1962. A fresh appointment was offered as a probationer at Bhopal Branch as clerk-cum-cashier-cum-godown keeper. Bhopal is Area II station. On a fresh appointment he could have been given a starting basic salary of Rs. 77/- but since he was drawing Rs. 81/- p.m. at Mandsaur he was allowed to draw this salary of Rs. 81/-. For his transfer he was not paid any T.A. nor was there any claim for it by Sri Sharma. No joining time was allowed and no formalities of transfer including the issue of last pay certificate were observed. The post of Godown Keeper is temporary by its nature. Paragraph 499 of the Sastry Award recommended that such godown keepers who are required to look after godowns at the cost of the borrowers for short periods if their work is found satisfactory, the Bank should absorb them in clerical establishments. This is in the nature of recommendation only. While at Mandsaur Shri Sharma was looking after godowns of borrowers whose accounts were seasonal. They were mostly factory accounts and his pay was charged from the borrowers. Paragraph 537 of the Sastry award which is under the heading of "transfer" states that where an employee is moved from Class III to II or Class II to Class I area he will get the benefit of the higher scale corresponding to the length of service put in. If the period of Sri Sharma while at Mandsaur which was about 2½ years is taken into account, it is not disputed that by reason of para 537 of the Sastry Award he should have started on Rs. 85/- p.m. The Bank, however, contends that this was not a case of transfer but a fresh appointment and therefore paragraph 537 is not at all attracted. The Bank could have given him the lower start but as Sri Sharma was already drawing Rs. 81/- he

was given this start. Besides other pleas there was also a plea that the dispute was not an industrial dispute. On pleadings of the parties four additional issues were framed on 18th September 1967 and one of them was whether the dispute is or is not an industrial dispute. Other issues need not be stated as I have come to the conclusion that the dispute has not been proved to be an industrial dispute. If that is so, this Tribunal will have no jurisdiction to adjudicate and any finding recorded on other issues would be without jurisdiction.

3. The dispute is on the face of it of an individual nature. It is well settled that it could assume the characteristic of an industrial dispute only if it is sponsored by a union of which the workman concerned is a member or has been espoused by a substantial number of workers of the establishment. The Union which has sponsored the dispute is M.P. Bank Employees' Association with a Central Office at Raipur. As the Constitution Ex. W/2 would show it is a general union membership of which is open to all employees of the Banks in the State of Madhya Pradesh. It is not a union confined to the employees of the Punjab National Bank. The Union was directed in the hearing rendered on 25th October 1967 to produce relevant papers on the question whether Sri Sharma was member of the Union on material date and the dispute has been properly espoused. There was a specific order to the Union to file Membership Register, copy of the Constitution and the Minutes Book having the resolution by which the dispute was sponsored. In spite of this direction when the next hearing was rendered on 23rd February 1968 Sri Sharma appeared personally examined himself and filed the Membership Form (Ex.W/1) dated 2nd November 1960. He also filed Constitution of the Union (Ex.W/2). He produced Membership Register for 1966-67 and from the same he filed extract Ex. W/3 to show that he was member of this Union in these two years. He, however, stated that he remained a member of the Union throughout and paid subscription. Assuming this to be so for which he did not produce the subscription receipt it will only mean that he was a member in 1966 and also 1967 and that he initially became member of the Union in 1960. The cause of action arose in June, 1962 when his pay was wrongly fixed at Rs. 81/-. He stated that he gave his case to the Union in 1963 and he did so in writing. There is no writing to this effect on record and neither the counterfoils nor the registers were produced for the years 1962 and 1963 to show that Sri Sharma was actually a member of the Union during this period. He may have become a member in 1960 and may have discontinued his membership and again renewed his membership in 1966 and 1967. If a document is in possession of a party and is not produced, an adverse inference would be drawn against him that if produced, it would have gone against him. Therefore, the presumption is that there were no subscription receipts and entries in Membership Register in proof of membership of Sri Sharma and that was why these documents were not produced.

4. Apart from this, there is yet one more important factor which goes against the root of the case. The Union as observed above is a general union for all the employees of the Banks in Madhya Pradesh. It had to establish that it has sufficient number of employees of this Bank as its members so as to acquire representative capacity. It is not necessary that a union of a particular establishment must necessarily sponsor the dispute and a union of the industry as a whole can also take up the dispute. To this extent the law as conceived after the ruling of Bombay Union of Journals Vs. Hindu, reported in 1961(II)LLJ p. 436 stands modified by the latest decision of the Hon'ble Supreme Court in workmen of Dharampal Prem Chandra Saugandhi Vs. Dharampal Prem Chandra Saugandhi reported in 1965(I)LLJ p. 668. While giving a right to the Union of an industry to take up the case care was, however, taken to state that the general union of the industry must at the same time possess a representative capacity. The following observation at page 673 enunciates the law on the subject:

"But in a given case, it is conceivable that the workmen of an establishment have no union of their own and some or all of them join the union of another establishment belonging to the same industry. In such a case, if the said union takes up the cause of the workmen working in an establishment which has no union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute, because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an

industrial dispute. "Industry" has been defined by S. 2(f) of the Act and it seems to us that in some cases the union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no union of their own, and an appreciable number of such workmen had joined such other union before their dismissal."

From what has been observed, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute." The Union has failed to show this in this case. It has not been shown by any evidence whatsoever that by reason of membership of the employees of this Bank, the Punjab National Bank, it can claim a representative character. For espousal, the Union was directed by order dated 25th October 1967 to produce the Minutes Book so as to show whether the dispute has been properly sponsored. The Minutes Book was not produced at all. The Membership Register produced from which extract was filed relating to Sri Sharma gave no indication of representative character of the Union at the two material times, namely when cause of action arose in June, 1962 and at the time of reference. That being so, without going into the academic question of the burden of proof when the Union had been specifically required to produce relevant proof and they failed to do so in spite of the direction, it has to be held that the dispute remained an individual dispute and this Tribunal has no jurisdiction to adjudicate. I, therefore, refrain from making any comments on the merit of controversy having no jurisdiction in the matter. It may, however, be mentioned casually that from the language of the terms of reference it is assumed that Sri Sharma was transferred from Mandsaur to Bhopal Branch a fact which had been denied by the Bank throughout. To this extent, the issue under reference is not happily worded.

(Sd.) G. C. AGARWALA,

Presiding Officer.

19-4-68.

[No. 51(55)/66-LRIV.]

New Delhi, the 17th May 1968

S.O. 1825.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to Parseoni Manganese Mine of Smt. Rani Indumati Devi, Nagpur and their workmen, which was received by the Central Government on the 8th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR.

Dated April 26, 1968.

PRESENT:

Sri G. C. Agarwala.—Presiding Officer.

CASE REF. No. CGIT/LC(R) (21) OF 1968

PARTIES:

Employers in relation to Parseoni Manganese Mine of Smt. Rani Indumati Devi, Nagpur.

Vs.

Its workmen, through the General Secretary, Sidhartha Manganese Khadan Kamgar Sangh, (HMS), Chargaon Mine, P.O. Kairi-Bijewada, Tehsil, Distt., Nagpur (Maharashtra).

APPEARANCES:

For employers.—None.

For workmen.—None.

INDUSTRY: Manganese Mine.

DISTRICT: Nagpur (Maharashtra).

AWARD

By Notification No. 35/1/67-LRI dated the 11th January, 1968, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

(1) Whether the workers of Parseoni Manganese Mine belonging to Smt. Rani Indumati Devi are entitled to increase in the present rate of wages namely Rs. 2.50 per frame of size of 7'X7'X1'? If so, from what date and at what rate?

(2) Whether the workers of Parseoni Manganese Mine belonging to Smt. Rani Indumati Devi are entitled to sick leave with wages? If so, at what rate, from what date and on what conditions?

2. With the order of reference there was no conciliation failure report. The parties did not file any statement of claim within the prescribed period as required by Rule 108 of Industrial Disputes (Central) Rules. When no statement was received notices were, however, sent by this Tribunal giving the parties another chance to file written statements. The employer was duly served by registered post and in spite of due service no action was taken by her either to send any communication or to make an appearance. The Union was also sent a notice under registered post and when the acknowledgment card was not received back another notice was sent fixing this date for final orders. Even so, no communication has been received from the side of the Union. It is manifest that neither party is interested in the dispute and therefore none of them has taken any step for appearance.

3. The issues under reference show that it is for the workmen to justify the claim for increase in wages and for entitlement of sick leave with wages. The workmen having failed to establish the fact both the issues under reference are answered in negative.

Sd./- G. C. AGARWALA,

Presiding Officer,

26-4-1968.

[No. 35/1/67-LRI]

S O 1826.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Malhar Stone and Lime Co. Limited, Malhar and their workmen, which was received by the Central Government on the 8th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
JABALPUR.

Dated April 29, 1968

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE REF. NO. CGIT/LC(R) (19) OF 1967

PARTIES:

Employers in relation to the Management of Malhar Stone and Lime Company Limited, Malhar (M.P.).

Vs.

Their workmen represented through The General Secretary, Choona Mazdoor Sangh, Satna (M.P.).

APPEARANCES:

For employers.—None.*For workmen.*—None.

INDUSTRY: Stone Lime Co.

DISTRICT: Satna (M.P.).

AWARD

By Notification No. 36/43/67-LRI dated 29th February, 1968, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

(1) Whether the action of the management of Maihar Stone and Lime Company Limited, Maihar (Madhya Pradesh) in terminating the services of the following workmen with effect from the 15th October, 1967 on the ground of reaching the age of superannuation is justified:—

- (i) Shri Damia Kol S/o Shri Din Dayal
- (ii) Shri Mangl Kol S/o Shri Din Dayal
- (iii) Shri Budhva S/o Shri Din Dayal

If not, to what relief are the workmen entitled?

(2) Whether the action of the management of Maihar Stone and Lime Company Limited, Maihar (Madhya Pradesh) in terminating the services of the following workmen with effect from the dates mentioned against each is justified:—

- (i) Shri Mohan Kanchi S/o Baijnath with effect from 7th September, 1967.
- (ii) Shri Chunwada S/o Vishwa Nath Kol with effect from 15th October, 1967.
- (iii) Shri Sukh Ram S/o Mangi with effect from 15th October, 1967.
- (iv) Shri Pharat S/o Mangi with effect from 15th October, 1967.
- (v) Shri Shiva Nath S/o Kaloo with effect from 15th October, 1967.
- (vi) Shri Vishwa Nath S/o Kaloo with effect from 15th October, 1967.
- (vii) Shrimati Ram Patia W/o Sukh Ram Kol with effect from 15th October, 1967.
- (viii) Shrimati Sirwatia W/o Chunwada Kol with effect from 15th October, 1967.
- (ix) Shrimati Nagmatia W/o Vishwa Nath Kol with effect from 15th October, 1967.
- (x) Shrimati Munnai Bai W/o Budhia Kol with effect from 15th October, 1967.
- (xi) Shrimati Ram Bai W/o Damia Kol with effect from 15th October, 1967.

If not to what relief are the workmen entitled?

2. After receipt of the reference order statements of claim were awaited from the parties which they should have filed within the prescribed period. However, when none was filed notices were issued on 30th March, 1968 requiring them to file the statements on or before 18th April, 1968. None appeared on that date but on 19th April, 1968 a written statement of the union was received. Another chance was given to the parties to appear and file statements of claim and it was directed that in case of default the case would be determined *ex parte*. 29th April, 1968 was fixed in the case. Neither party has, however, appeared. It appears that they are not interested in pursuing the dispute. I have, therefore, to determine the case in the absence of the parties on the basis of the issues under reference and the conciliation failure report.

3. There are two issues under reference. The first issue relates to the termination of services of three workmen on the ground of superannuation. There is nothing to indicate that there is any such provision in the Standing Orders of the employers which are not on record and on the basis of which they could require the workmen to retire. It was for them to have justified the termination on the ground of superannuation. The first issue under reference is, therefore, answered in negative. The three concerned workmen S/Sri Damia, Mangi Kol and Budhva are entitled to reinstatement and back wages.

The second issue under reference relates to termination of services of 11 workmen, the first named Sri Mohan Kanchi from 7th September, 1967, and the remaining 10, serials no. 2 to 11, from 15th October, 1967. From the conciliation failure report, it appears that the management's stand in conciliation was that they had to terminate the services because there was no demand for lime stone in

the market and they had to reduce the strength. It further appears that provisions of Sec. 25F for retrenchment were not complied with and they were also not paid retrenchment compensation. It was for them to have established that there was justification for retrenchment and they complied with due formalities of retrenchment. Having failed to put in appearance and to justify their action the second issue under reference will also have to be answered that the management was not justified in terminating the services of 11 workmen concerned. They are also entitled to be reinstated with back wages and continuity of service.

Since both parties have defaulted in appearance no order is made for costs.

Sd./- G. C. AGARWALA,
Presiding Officer.

29-4-1968.

[No. 38/43/67-LRI.]

S.O. 1827.—Whereas the Central Government, being satisfied that the public interest so required, had declared by a notification made in pursuance of the provisions of the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), being the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 4191 dated the 22nd November, 1967] service in any oil-field, to be a public utility service for the purposes of the said Act for a period of six months from the 22nd November, 1967;

And whereas the Central Government is of the opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said service to be a public utility service for the purposes of the said Act for a further period of six months from the 22nd May, 1968.

[No F. 1/28/68-LRI.]

New Delhi, the 20th May 1968

S.O. 1828—In exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby makes the following further amendment to the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2286, dated the 4th July, 1967 (as amended by Notification No. S.O. 4540 dated the 13th December, 1967) namely:—

In the said notification, in the second paragraph, for the words and figures:

"before the First June, 1968"

the words and figures

"before the 16th October, 1968"

shall be substituted.

[No. 17/10/68-LRIV.]

ORDERS

New Delhi, the 16th May 1968

S.O. 1829.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Punjab National Bank Limited and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Jaipur constituted under section 7A of the said Act.

SCHEDULE

Whether the management of the Punjab National Bank Limited was justified in not allowing Shri Ram Jug Pardey, Armed Guard in the Jaipur Branch of the Bank to appear in the competitive examination for the post of Clerk along with the other members of the subordinate cadre? If not, to what relief is the workman entitled?

[No. 23/23/68/LR.III.]

New Delhi, the 17th May 1968

S.O. 1830.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Messrs Balaram and Brothers, Raising Contractors in Kasia Iron Mines of Messrs S. Lal and Company (Private) Limited, Post Office Barbil, District Keonjhar (Orissa) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the refusal of employment to Sarvashri Chatan, Bhanj Bhongra, Budhua, Chambrai, Budhu and Shrimati Budhuni, Miners by Messrs Balaram and Brothers, Raising Contractors in Kasia Iron Mines of Messrs S. Lal and Company (Private) Limited, Post Office Barbil, District Keonjhar (Orissa) was unjustified? If so, to what relief are the workmen entitled?

[No. F. 37/6/68-LRJ.]

CORRIGENDUM

New Delhi, the 16th May 1968

S.O. 1831.—In the Order of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1185, dated the 25th March, 1968 published at page 1750 of the Gazette of India, Part II Section 3 Sub-Section (ii), dated the 30th March, 1968.

in line 8, for "Shri T. Kulkarni", read "Shri P. D. Kulkarni".

[No. 2/11/68-LR.III.]

O. P. TALWAR, Under Secy.

(Department of Labour and Employment)

New Delhi, the 7th May 1968

S.O. 1832.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal No. (2), Dhanbad, in the industrial dispute between the employers in relation to the Bararee and Jealgora Collieries of Messrs East Indian Coal Company Limited (Post Office Jealgora, District Dhanbad) and their workmen, which was received by the Central Government on the 2nd May, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 43 OF 1967

PARTIES:

Employers in relation to the Bararee and Jealgora Collieries of Messrs East Indian Coal Company Limited, (Post Office Jealgora, District Dhanbad).

AND

Their workmen.

PRESENT:

Shri Nandagiri Venkata Rao—Presiding Officer.

APPEARANCES:

For the Employers.—Shri D. Narsingh, Advocate.

For the Workmen.—Shri Prasant Burman, Secretary, Khan Mazdoor Congress.

State: Bihar

Industry: Coal.

Dhanbad, dated the 29th April, 1968.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Bararee and Jealgora Collieries of Messrs East Indian Coal Company Limited (Post Office Jealgora, District Dhanbad) and their workmen by its order No. 1/6/65/LRI dated 22nd May, 1965 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the action of the management of the Bararee and Jealgora Collieries of Messrs East Indian Coal Company Limited in dismissing the following 17 workmen with effect from the dates shown against each on the charge of absence from duty without permission, was justified? If not, to what relief are the workmen entitled?"

Sl. No.	Name of the worker and E. B. No.	Occupation	Date of dismissal.
1	2	3	4
1	Rampal (41177)	Pickminer	26-12-64
2	Rameswarup (41229)	Do.	26-12-64
3	Ramjiawan (41228)	Do.	26-12-64
4	Maharanidin (41471)	Do.	28-12-64
5	Ramsukh (42728)	Do.	30-12-64
6	Tirath Kurmi (41187)	Machine Cut Loader	28-12-64
7	Sharda Singh (40433)	Do.	23-12-64
8	Raju Pasi (41201)	Do.	30-12-64
9	Ram Gulam (42668)	Do.	30-12-64
10	Tekai (12492)	G. P. Miner	28-11-64
11	Bhagwati (10821)	Pickminer	7-12-64
12	Lachhuman (41348)	Do.	7-12-64
13	Banulal (10781)	Do.	7-12-64
14	Mohan (12428)	M. C. Loader	7-12-64
15	Mangar (40845)	Do.	7-12-64
16	Bihari (10766)	Pickminer	9-11-64
17	Nanku (10812)	Do.	9-11-64"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 85 of 1965 on its file. Workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67 LRH dated 8th May, 1967 under Section 33(B)(1) of the Industrial Disputes Act, 1947. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 43 of 1967. The employers also filed their statement of demands on 3rd July, 1967.

3. The workmen were represented by Shri Prasanta Burman, Secretary, Khan Mazdoor Congress and the employers by Shri D. Narsingh, Advocate. The case of the workmen in brief is that on 3rd October, 1964 there was some labour trouble at the employers colliery in which the 17 affected workmen along with several others were arrested by the police and they were released on bail after about 3 months, that when the 17 affected workmen reported to duty on their release, the management refused to give them work and charge-sheeted them for absenting themselves unauthorisedly from duty, that the management as a result of the enquiries, dismissed them from service knowing fully well that it was not possible at all for the affected workmen to attend to duty during the period of their detention in police custody, that the action of the management was arbitrary and illegal and actuated with the motive to victimise the affected workmen for being members of Khan Mazdoor Congress and that, as such, the orders of their dismissal required to be vacated. In the statement of demands filed by them the employers took two preliminary objections viz. (1) that the transfer of the reference by the Central Government to this Tribunal was ultra-vires of Section 33B (1) of the Industrial Disputes Act, 1947 and (2) that the dispute involved in the reference was not an industrial dispute within the meaning of the Industrial Disputes Act, 1947. On the merits the employers did not deny that the affected workmen were under detention for about three months and that after their release they reported to duty but the management refused them work and gave them charge-sheets. The employers simply pleaded that the affected workmen being under detention was not relevant for the present proceedings. They further pleaded that Shri Banulal, Sl. No. 13 of the schedule to the order of reference was never their employee and that Shri Tirath Kurmi, S. No. 6 of the schedule has been re-employed. They also denied that they had victimised the affected workmen as alleged. On behalf of the workmen two witnesses are examined and Ext. W1 is marked. For the employers a witness is examined and Exts. M.1 to M.57 and M.68 to M.87 are marked by consent of the workmen and Exts. M.58 to M.67 on proof by MW.1 are marked. In respect of the preliminary objection, viz. that the transfer of the reference by the Central Government to this Tribunal is ultra-vires of Section 33B(1) of the Industrial Disputes Act, 1947, arguments were heard and order was passed on 31st July, 1967 over-ruling it. On the request of the employers more than two months time was granted to enable them to agitate the order before the High Court.

4. Regarding the objection that the Khan Mazdoor Congress had no *locus standi* to raise any dispute in the matter of the dismissal of the affected workmen and that the affected workmen were not its members at the relevant point of time, WW1, one of the affected workmen at Sl. No. 8 of the schedule of the order of reference is examined. He has deposed that he was a member of Khan Mazdoor Congress since 1963 or 1964. WW2 is the General Secretary of Khan Mazdoor Congress since its inception in 1962. It is in his evidence that since 1963 Khan Mazdoor Congress is having a branch at the colliery of the employers and that all the affected workmen were members of the branch union during the years 1963-1964. He brought along with him the membership registers relating to the concerned years and filed an extract, Ext. 1 showing in it names of the affected workmen along with their Sl. Nos. as shown in the reference, Sl. Nos. in the registers, designation, receipt number and date of receipt of subscription. Out of the 17 affected workmen, names of 13 can be found in it. He was subjected to searching cross-examination, but he deposed that Ext. 1 was compared by him with the registers and found correct. He denied that the two membership registers were not genuine or they were brought up to suit the case under reference. On this point there is absolutely no rebuttal evidence. The solitary witness of the employers MW.1 did not whisper a word in this regard. From the failure report of the Regional Labour Commissioner (Central), Dhanbad I see that the dispute in respect of the affected workmen was sponsored by the General Secretary, Khan Mazdoor Congress. It follows that before the Central Government decided to make the reference the dispute was raised by the Khan Mazdoor Congress on behalf of the affected workmen. For this reason, I find no substance in the objection raised on behalf of the employers that the dispute involved in

the reference was not an industrial dispute or that Khan Mazdoor Congress had no *locus standi* to raise the dispute. The objection is over-ruled.

5. The employers had taken a specific plea that Shri Banulal shown at Sl. No. 13 of the schedule to the order of reference was never their employee and as such the onus was lying on the workmen to prove that Shri Banulal was an employee of the employers. But no evidence is lead on behalf of the workman in this regard. Neither of the two witnesses stated a word about Shri Banulal. The name of Shri Banulal cannot be found in Ext. W1 either. Consequently, I held that Shri Banulal, mentioned at Sl. No. 13 in the schedule to the order of reference is not entitled to any relief and it cannot be said that he was dismissed by the employers or that his dismissal was not justified. The employers had also pleaded that Shri Tirath Kurmi mentioned at Sl. No. 6 of the schedule to the order of reference has been re-employed with effect from 3rd April, 1965. It is admitted by the employers that the affected workman, Shri Tirath Kurmi was their employee and that he was charge-sheeted and ultimately dismissed on 28th December, 1964. In view of this the burden was lying on the employers to prove that he was re-instated on 3rd April, 1965, without any claim from him for his back service, as pleaded by them. Except producing Ext. M-21, a letter of the Deputy Chief Mining Engineer addressed to the colliery Manager on 12th May, 1965, no other material is brought on record. It was not difficult for the employers to produce the affected workmen himself if he was really re-employed and continues to be in their employment. For this reason the plea of the employers cannot sustain. It is rejected.

6. It is not denied by the employers that the affected workmen were arrested by the police and kept in jail for about 3 months and that they reported to duty on their release. In para 7(c) of their statement the employers categorically conceded "the police and the local authorities who had visited the spot had themselves found that the workmen concerned and a number of other workmen had indulged in acts of violence and, therefore, arrested them". Admittedly the affected workmen were arrested on 3rd October, 1964. All the charge-sheets issued to them, Exts. M.2, M.6, M.10, M.15, M.18, M.23, M.27, M.31, M.34, M.38, M.43, M.47, M.50 and M.54 clearly allege that they were absent from duty with effect from 2nd October, 1964 for more than 10 days. It is not the case of the employers that they had no knowledge that the affected workmen were arrested on 3rd October, 1964 and were in custody for about 3 months. In their statement they state "the management's knowledge of their arrest is thoroughly irrelevant to the position that they had absented without permission and without any satisfactory cause for which they were liable for disciplinary action under the Standing Orders". It emerges, therefore, that the employers are of the view that in spite of their being under legal custody for about 3 months the affected workmen could be held guilty of misconduct for absenting themselves for more than 10 days. According to Clause 27(16) of the certified Standing Orders, Ext. M-57 "continuous absence without permission and without satisfactory cause for more than 10 days" constitutes misconduct being guilty of which an employee may be suspended, fined or dismissed. But it is significant to note that the continuous absence must be without permission or without satisfactory cause. In reply to the charge-sheets served on them the affected workmen have stated clearly, "you all know that there was a labour trouble in the colliery and there was indiscriminate arrest and I was also a victim of this indiscriminate arrest. As there was undue delay in granting us bail beyond our control I could not join my duty". In the enquiry held against the affected workmen the witness for the prosecution simply deposed that from the attendance registers it was seen that the affected workmen absented from duty from 3rd October, 1964 continuously for more than 10 days and that they had not secured any permission to do so. The employers had knowledge that the affected workmen were arrested by the police and were detained in custody during the period for which the charge-sheets were issued to them. Nothing was elicited from the witnesses that the detention of the affected workmen was not a satisfactory cause for their absence. It is obvious that when the affected workmen were arrested by the police and kept in custody it was physically impossible for them to attend to duty or seek permission from the authorities for not doing so. There cannot be any other cause more satisfactory than the arrest and detention by the police for absenting from duty. In this view I hold that the finding of the enquiry Officer in respect of the affected workmen was perverse, and, as such, their dismissal from service cannot be held as justified.

7. I, therefore, hold that the action of the management of the Bararee and Jealgora collieries of Messrs East Indian Coal Company Ltd. in dismissing the following 16 workmen with effect from the dates showing against each on the charge of absence from duty without permission, was not justified. They must

be allowed to resume duty immediately. I further hold that each of the 16 workmen are entitled to their full wages and other dues and benefits for the period from the date of their dismissal to the date of their reinstatement as though they have been continuously on duty. As I have already held, Shri Banulal (10781), pickminer mentioned at Sl. No. 13 of the schedule to the order of reference is not entitled to any relief. Considering the circumstances of the case, no order is passed as to costs.

Sl. No.	Name of the worker and E.B. No.	Occupation	Date of dismissal
1	2	3	4
1	Rampal (41177)	Pickminer	26-12-64
2	Rameswarup (41229)	Do.	26-12-64
3	Ramjilawan (41228)	Do.	26-12-64
4	Maharanidin (41471)	Do.	28-12-64
5	Ramsukh (42728)	Do.	30-12-64
6	Tirath Kurmi (41187)	Machine Cut Loader	28-12-64
7	Sharda Singh (40433)	Do.	23-12-64
8	Raju Pasi (41201)	Do.	30-12-64
9	Ram Gulam (42668)	Do.	30-12-64
10	Tekai (12492)	G. P. Miner	28-11-64
11	Bhagwati (10821)	Pickminer	7-12-64
12	Lachhuman (41348)	Do.	7-12-64
13	Mohan (12428)	M. C. Loader	7-12-64
14	Mangar (40845)	Do.	7-12-64
15	Bihari (10766)	Pickminer	9-11-64
16	Nanku (10812)	Do.	9-11-64

Award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

Sd./- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal (No. 2) at Dhanbad.

APPENDIX I

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD

REFERENCE NO. 43 OF 1967

Employers in relation to the Baraee and Jealgora Collieries of Messrs East Indian Coal Company Limited, (Post Office Jealgora, Distt. Dhanbad)

Vs.

Their Workmen

List of documents admitted in evidence for employers

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted by consent or on proof	Proved by
1. Shri Rampal				
Ext. M1	Dismissal letter No. 122877 dated 26-12-64	4-12-67	By consent	..
Ext. M2	Chargesheet No. RO/54/64 dated 7-12-64	Do.	Do.	..
Ext. M3	Explanation dated 7-12-64	Do.	Do.	..
Ext. M4	Enquiry Notice dated 18-12-64	Do.	Do.	..
2. Shri Rameswarup				
Ext. M5	Dismissal letter No. 122878 dated 26-12-64	Do.	Do.	..
Ext. M6	Chargesheet No. BO/537/64 dated 7-12-64	Do.	Do.	..
Ext. M7	Explanation dated 7-12-64	Do.	Do.	..
Ext. M8	Enquiry Notice dated 18-12-64	Do.	Do.	..
3. Shri Ramjiawan				
Ext. M9	Dismissal letter No. 122880 dated 26-12-64	Do.	Do.	..
Ext. M10	Chargesheet No. BO/539/64 dated 7-12-64	Do.	Do.	..
Ext. M11	Explanation dated 7-12-64	Do.	Do.	..
Ext. M12	Enquiry Notice dated 18-12-64	Do.	Do.	..
4. Mahavanidin				
Ext. M13	Dismissal letter No. 112035 dated 23-11-64	Do.	Do.	..
Ext. M14	Note dated 26-11-64	Do.	Do.	..
Ext. M15	Chargesheet No. BO/485/64 dated 16-11-64	Do.	Do.	..
Ext. M16	Enquiry Notice dated 23-11-64	Do.	Do.	..
5. Shri Ramsukh				
Ext. M17	Dismissal letter No. 123057 of 30-12-64	Do.	Do.	..
Ext. M18	Chargesheet No. BO/540/64 dated 7-12-64	Do.	Do.	..
Ext. M19	Explanation dated 7-12-64	Do.	Do.	..
Ext. M20	Enquiry Notice dt. 23-12-64	Do.	Do.	..
6. Shri Tirath Kurmi				
Ext. M21	Reinstatement letter No. 054416 dated 12-5-65.	Do.	Do.	..
Ext. M22	Dismissal letter No. 122921 dt. 28-12-64	Do.	Do.	..
Ext. M23	Chargesheet No. BO/534/63 dt. 7-12-64	Do.	Do.	..
Ext. M24	Enquiry Notice dt. 15-12-64	Do.	Do.	..
Ext. M25	Enquiry Notice dt. 17-12-64	Do.	Do.	..
7. Shri Sharda Singh				
Ext. M26	Dismissal letter No. 122828 dt. 23-12-64	Do.	Do.	..
Ext. M27	Chargesheet No. BO/542/64 dt. 7-12-64	Do.	Do.	..
Ext. M28	Enquiry Notice dt. 15-12-64	Do.	Do.	..
Ext. M29	Enquiry Notice dt. 17-12-64	Do.	Do.	..

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted by consent or on proof	Proved by
8. Shri Raju Pasi				
Ext. M30	Dismissal letter No. 123052 dt. 30-12-64	4-12-67	By consent	..
Ext. M31	Chargesheet No. BO/558/64 dt. 12-12-64	Do.	Do.	..
Ext. M32	Enquiry Notice dt. 23-12-64	Do.	Do.	..
9. Shri Ram Gulam				
Ext. M33	Dismissal letter No. 123050 dt. 30-12-64	Do.	Do.	..
Ext. M34	Chargesheet No. BO/538/64 dt. 7-12-64	Do.	Do.	..
Ext. M35	Explanation dt. 9-12-64	Do.	Do.	..
Ext. M36	Enquiry Notice dt. 23-12-64	Do.	Do.	..
10. Shri Tekai				
Ext. M37	Dismissal letter No. 112034 dt. 30-11-64	Do.	Do.	..
Ext. M38	Chargesheet No. BO/487/64 of 16-11-64	Do.	Do.	..
Ext. M39	Explanation dt. 16-11-64	Do.	Do.	..
Ext. M 40	Enquiry Notice dt. 24-11-64	Do.	Do.	..
11. Shri Bhagwati.				
Ext. M 41	Dismissal letter No. 122291 dt. 7-12-64	Do.	Do.	..
Ext. M 42	Note dt. 2-12-64	Do.	Do.	..
Ext. M 43	Chargesheet No. JO/1034/14 dated 17-11-64	Do.	Do.	..
Ext. M 44	Explanation dt. 20-11-64	Do.	Do.	..
Ext. M 45	Enquiry Notice dt. 23-11-64	Do.	Do.	..
12. Shri Lachhman				
Ext. M 46	Dismissal letter No. 122292 of 7-12-64.	Do.	Do.	..
Ext. M 47	Chargesheet No. JO/1032/64/64 of 17-11-64	Do.	Do.	..
Ext. M 48	Enquiry Notice dt. 19-11-64.	Do.	Do.	..
13. Shri Mohan Ram				
Ext. M 49	Dismissal letter No. 122285 of 7-12-64.	Do.	Do.	..
Ext. M 50	Chargesheet No. JO/1033/64 of 17-11-64	Do.	Do.	..
Ext. M 51	Explanation dt. 20-11-64	Do.	Do.	..
Ext. M 52	Enquiry Notice dt. 23-11-64.	Do.	Do.	..
14. Shri Mangar				
Ext. M 53	Dismissal letter No. 122288 dt. 7-12-64	Do.	Do.	..
Ext. M 54	Chargesheet No. JO/1031/64 dt. 17-11-64	Do.	Do.	..
Ext. M 55	Explanation dt. 20-11-64	Do.	Do.	..
Ext. M 56	Enquiry Notice dt. 23-11-64	Do.	Do.	..
Ext. M 57	Standing Orders.	22-1-68	Do.	..
Ext. M 58	Enquiry report dt. 1-12-64	22-2-68	On proof.	MW 1
Ext. M 59	Enquiry proceedings (3 pages)	Do.	Do.	Do.
Ext. M 60	Enquiry Report dated 30-11-64	Do.	Do.	Do.
Ext. M 61	Enquiry proceedings (4 pages)	Do.	Do.	Do.
Ext. M 62	Enquiry Report dt. 1-2-1964	Do.	Do.	Do.
Ext. M 63	Enquiry proceedings (3 pages)	Do.	Do.	Do.
Ext. M 64	Enquiry Report dated 1-2-64	Do.	Do.	Do.
Ext. M. 65	Enquiry proceedings (3 pages)	Do.	Do.	Do.
Ext. M 66	Termination letter No. 111466 dt. 9-11-64	Do.	Do.	Do.
Ext. M 67	Termination letter No. 111467 dt. 9-11-64	Do.	Do.	Do.
Ext. M 68	Enquiry Report dated 22-12-64	Do.	Do.	Do.
Ext. M 69	Enquiry proceedings (6 pages)	Do.	Do.	Do.
Ext. M 70	Enquiry report dt. 22-12-64	Do.	Do.	Do.
Ext. M 71	Enquiry proceedings (5 pages)	Do.	Do.	Do.
Ext. M 72	Enquiry report dt. 22-12-64	Do.	Do.	Do.
Ext. M 73	Enquiry proceedings (5 pages)	Do.	Do.	Do.
Ext. M 74	Enquiry report dt. 24-11-64	Do.	Do.	Do.
Ext. M 75	Enquiry proceedings (6 pages)	Do.	Do.	Do.

Distinguishing mark or number	Description of document and date	Date of submission	Whether admitted by consent or on proof	Proved by
Ext. M 76	Enquiry Report dt. 28-12-64	22-2-68	On proof	MW 1.
Ext. M 77	Enquiry proceedings (6 pages)	Do.	Do.	Do.
Ext. M 78	Enquiry report dt. 18-12-64	Do.	Do.	Do.
Ext. M 79	Enquiry proceedings (7 pages)	Do.	Do.	Do.
Ext. M 80	Enquiry report dt. 18-12-64	Do.	Do.	Do.
Ext. M 81	Enquiry proceedings (7 pages)	Do.	Do.	Do.
Ext. M 82	Enquiry Report dt. 28-12-64	Do.	Do.	Do.
Ext. M 83	Enquiry proceedings (9 pages)	Do.	Do.	Do.
Ext. M 84	Enquiry report dt. 26-12-64	Do.	Do.	Do.
Ext. M 85	Enquiry proceedings (6 pages)	Do.	Do.	Do.
Ext. M 86	Enquiry report dated 25-11-64	Do.	Do.	Do.
Ext. M 87	Enquiry proceedings (5 pages)	Do.	Do.	Do.

List of Documents admitted in Evidence for the Workmen.

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted by consent or on proof.	Proved by
NIL	NIL	NIL	NIL	NIL

Sd./- N. VENKATA RAO.
Presiding Officer.

APPENDIX II

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

REFERENCE No. 43 OF 1967.

Employers in relation to the Bararee and Jealgora Collieries of Messrs East Indian Coal Company Limited, (Post Office Jealgora, Distt. Dhanbad).

Vs.

Their workmen

List of Witnesses Examined for the Workmen

No. of witness	Name of witness	Date of examination
WW1	Shri Raju Passi	22-1-1968
WW2	Shri Gopal Chandra Munshi	22-2-1968.

List of Witnesses Examined for the Employers

No. of witness	Name of witness	Date of examination
MW1	Shri Jagdish Prasad Srivastava.	22-2-1968.

Sd./- N. VENKATA RAO,
Presiding Officer.

[No. 1/6/68-LR.II.]

New Delhi, the 13th May 1968

S.O. 1833.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal (No. 2) Dhanbad, in the industrial dispute between the employers in relation to the Burrakur Coal Company Limited—Managing Agents, Messrs Bird and Company (Private) Limited, Post Office Sijua (District Dhanbad) and their workmen, which was received by the Central Government on the 7th May, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

In the matter of a reference Under Section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 233 OF 1967

PARTIES:

Employers in relation to the Burrakur Coal Company Limited—Managing Agents, Messrs Bird and Company (Private) Limited, Post Office Sijua (District Dhanbad).

AND

Their Workmen.

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

APPEARANCES:

For the Employers.—Shri D. Narsingh, Advocate.

For the Workmen.—Shri Lalit Burman, General Secretary, Bihar Koyala Mazdoor Sabha.

State: Bihar.

Industry: Coal.

Dhanbad, 30th April, 1968.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Burrakur Coal Company Limited—Managing Agents, Messrs Bird and Company (Private) Limited, Post Office Sijua (District Dhanbad) and their workmen by its order No. 2/78/67-LRII dated 6th June, 1967 referred to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matter specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the management of Messrs Bird & Company (Private) Limited, Post Office Sijua (District Dhanbad) was justified in transferring Shri A. K. Chatterjee, Clerk, Grade-III from the office of the Chief Mining Engineer, Messrs Bird and Company (Private) Limited, Post Office Sijua (District Dhanbad) to Saltore Colliery, with effect from the 12th September, 1968 and in subsequently dismissing him from service with effect from the 8th February, 1967? If not, to what relief is the workman entitled?"

2. The Tribunal registered the reference as reference No. 233 of 1967. Workmen filed their statement of demands.

3. On 24th April, 1968 both parties submitted a joint memorandum of settlement and stated that they did not wish to prosecute the case any further and that the award may be passed in terms of the settlement. As per the terms of the settlement the affected workmen, Shri A. K. Chatterjee is to be transferred back to Sijua and he would not be transferred again to any colliery outside Jharia coal fields for a period of 30 months. I consider the terms of settlement favourable to the affected workmen as well as to the workmen. The settlement is, therefore, accepted and the award is made accordingly and submitted under section 15 of the Industrial Disputes Act, 1947. The memorandum of settlement is annexed herewith and is made part of the award.

Sd./ N. VENKATA RAO,
Presiding Officer.

Central Government Industrial Tribunal (No. 2) at Dhanbad.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL No. 2, DHANBAD.

REFERENCE No. 233 OF 1967.

PARTIES :

Employers in relation to M/s. Burrakur Coal Company Ltd., Managing Agents, M/S. Bird & Co. (Private) Ltd., P. O. Sijua, Dist. Dhanbad.

AND

Their Workmen.

In the matter of the transfer and subsequent dismissal of Anil Kumar Chatterjee, Grade III Clerk.

Memorandum of Settlement

The parties aforesaid beg to submit as follows:—

1. The issue referred to this Tribunal for adjudication relates to the transfer of Shri Anil Kumar Chatterjee, Clerk Grade III, from the office of the Chief Mining Engineer of Messrs. Bird & Company (Private) Ltd., P. O. Sijua, Dist. Dhanbad, to Saltore Colliery and to his subsequent dismissal from service.

2. The parties to the dispute have, however, come to a settlement by mutual negotiations among themselves on the following terms:

Terms of Settlement

- (a) With a view to ease the domestic difficulties of the workman concerned and of his family, the management has agreed that it would transfer back the workman's Shri Ajit Kumar Chatterjee, a surveyor in the employ of the management, who had been transferred from the office of the Chief Mining Engineer at Sijua in September, 1967 to the Company's Bankola Colliery in the Raniganj coalfields, to the Katras-Choitudih Colliery of the Company within fifteen days from the date of this settlement.
- (b) The management further agrees that it would not transfer the said surveyor, Shri Ajit Kumar Chatterjee, to any colliery outside Jharia coalfields for a period of thirty months.
- (c) On this assurance of the management, the workman concerned and the Bihar Koyala Mazdoor Sabha, acting on his behalf, declare that there is no subsisting dispute between the workman concerned and the management relating to the workman's transfer and his subsequent dismissal from service.
- (d) The workman and the Union further agree that, in the circumstances aforesaid, they do not wish to prosecute the present case and shall not claim any relief under the present reference arising out of his transfer and subsequent dismissal from service.
- (e) The parties shall bear their own costs of these proceedings

3. The Tribunal has not fixed any date for hearing of the matter. In view of this settlement, however, it is prayed that the Tribunal may be pleased to take up the case for hearing today and dispose it of by giving its award in terms aforesaid.

(Sd.) LALIT BURMAN,
General Secretary
Bihar Koyala Mazdoor Sabha,
For the Workmen.
(Sd.) ANIL KUMAR CHATTERJEE,
Workman herein concerned

1. (Sd.) D. NARSINGH,
Advocate

2. (Sd.) J. L. SINHA,
Group Personnel Officer.
For the Employers

Dated 24th April, 1968.

APPENDIX I

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
(NO. 2) AT DHANBAD

REFERENCE NO. 233 OF 1967

Employers in relation to the Burrakur Coal Company Limited—Managing Agents,
Messrs Bird and Company (Private) Limited, Post office Sijua (District
Dhanbad)

AND

Their Workmen.

List of Documents admitted in evidence for the Employers

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

List of documents admitted in evidence for the Workmen

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

(Sd.) N. VENKATA RAO,

Presiding Officer,
Central Government Industrial Tribunal
(No. 2) at Dhanbad

APPENDIX II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

REFERENCE NO. 233 OF 1967

Employers in relation to the Burtakur Coal Company Limited—Managing Agents,
Messrs. Bird and Company (Private) Limited, Post office Sijua (District
Dhanbad).

AND

Their Workmen.

List of Witness examined for the Employers

No. of witness	Name of Witness	Date of examination
NIL	NIL	NIL

List of Witness Examined for the Workmen.

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

(Sd.) N. VENKATA RAO,

Presiding Officer,
Central Government Industrial Tribunal
(No. 2) at Dhanbad

[No. 2/78/67-LR-II.]

S.O. 1834—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal (No. 2) Dhanbad, in the industrial dispute between the employers in relation to the 6 and 7 Pits Jamadoba Colliery of Messrs Tata Iron and Steel Company Limited, Jamadoba, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 7th May, 1968.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD**

In the matter of a reference Under Section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 85 OF 1967.

PARTIES:

Employers in relation to the 6 & 7 Pits Jamadoba Colliery of Messrs Tata Iron & Steel Company Ltd., Jamadoba, P.O. Jealgora, Dist. Dhanbad.

AND

Their Workmen.

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

APPEARANCES:

For the Employers.—Shri L. H. Parvatiyar, Legal Assistant.

For the Workmen.—Shri Ram Mitra, Secretary, Bihar Koyala Mazdoor Sabha.

State: Bihar

Industry: Coal.

Dhanbad, 30th April, 1968.

AWARD

The Central Government, being of opinion that an Industrial dispute exists between the employers in relation to the 6 & 7 Pits Jamadoba Colliery of Messrs Tata Iron & Steel Company Ltd., Jamadoba P. O. Jealgora, Dist. Dhanbad and their workmen by its order No. 2/112/65-LRII dated 12th November, 1965 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matter specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"(1) Whether the management of 6 & 7 Pits of Jamadoba Colliery of Messrs Tata Iron & Steel Company Limited, Jamadoba, Jealgora Post Office, District Dhanbad were justified in maintaining the Service record of Shri Mahato only from 19th May, 1961 instead of 9th July, 1966—the first day of his appointment?

(2) If not, to what relief is the workman entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 187 of 1966 on its file. Workmen as well as employers filed their statements of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967 under Section 33B(1) of the Industrial Disputes Act, 1947. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 83 of 1967.

3. The case of the workmen in brief is that while the affected workman, Shri Mahato was actually appointed at the colliery of the employers on 9th July, 1956 and was working without any break, the management is maintaining his service record only from 19th May, 1961. Their claim is that the service record should be maintained from 9th July, 1956. The defence of the employers is that the affected workman was appointed on 9th July, 1956 and has been working as a substitute worker intermittently in various vacancies as and when they occurred, that he was employed permanently as a mazdoor from 19th May, 1961 and that as per the practice his service record was maintained from 19th May, 1961. The workmen were represented by Shri Ram Mitra, Secretary, Bihar Koyala Mazdoor Sabha and the employers by Shri L. H. Parvatiyar, Legal Assistant. On behalf of the workmen the affected workman was examined as WW.1 and on behalf of the employers a witness was examined and Ext. M.1 was marked.

4. The affected workman, WW.1 states that from 9th July, 1956 he was appointed permanently as a packing mazdoor. But he concedes that he does not have with him the letter appointing him as a packing mazdoor from 9th July, 1956. He further concedes that he has no written record to show that he was appointed permanently from 9th July, 1956. It emerges that except his bald statement there is no evidence to show that he was appointed permanently as a packing mazdoor from 9th July, 1956. There is no evidence also to show that from 9th July, 1956 he has been working without break. As shown by him the identity card system was introduced in the colliery in 1959. He says that for the first time he had received his identity card in about May 1961 and the date of appointment in it typed as 9th July, 1956 was struck off and re-written as 19th May, 1961 and since then the date 19th May, 1961 is being repeated in his card issued each year. He deposed that he has submitted a complaint in writing to the Manager in 1961 stating that the date 19th May, 1961 mentioned in his card was wrong and that it should be 9th July, 1956. There is no proof that he had submitted such a complaint. On his own statement he did not obtain any receipt for the complaint nor does he have any office copy of the complaint with him. As admitted by him he is aware of the procedure that if no redress is available on any complaint from the Manager, Deputy Chief Mining Engineer or the Chief Mining Engineer should be approached by the employee. But he did not approach any such authority when he did not get relief from the Manager. Ext. M.1 is the service record of the affected workmen. It shows that on 9th July, 1956 he was appointed as a temporary fitter mazdoor and it was only on 19th May, 1961 he was made permanent. The clerk in the office of the Chief Mining Engineer of the colliery is examined as MW.1. He is working there in that capacity since 1958. He has pointed out that the service record of employees is maintained in accordance with the practice but not in compliance with any law. He also deposed that such a record is maintained when an employee is made permanent. No statutory provision is brought to my notice under which service record of employees is mandatory to be maintained. As I have discussed above, there is no material whatsoever to show that the affected workman was employed permanently from 9th July, 1956 or that since the date he has been working continuously without break. Under these circumstances the case set up by the workmen cannot sustain.

5. I, therefore, hold that the management of 6 & 7 Pits of Jamadoba Colliery of Messrs Tata Iron & Steel Company Limited, Jamadoba, Jealgora Post Office, District Dhanbad were not unjustified in maintaining the service record of the affected workman, Shri Mahato only from 19th May, 1961 and as such, he is not entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

Sd./ N. VENKATA RAO,
Presiding Officer,

Central Government Industrial Tribunal (No. 2) at Dhanbad.

APPENDIX I

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2)
AT DHANBAD

REFERENCE No. 35 OF 1967

Employers in relation to the 6 and 7 pits Jamadoba Colliery of Messers Tata Iron & Steel Company Ltd., Jamadoba, P.O. Jealgora, Dist. Dhanbad

AND

Their Workmen.

List of documents admitted in evidence for the Employers.

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted or approved	Proved by
Ext. M1	Service record of Shri N. Mahato	27-2-66	On proof	Nil

List of documents admitted in evidence for the workers

Distinguishing mark of number	Description of document and date	Date of admission	Whether admitted or approved	Proved by
NIL	NIL	NIL	NIL	NIL

(Sd.) N. VENKATA RAO,
Presiding Officer
Central Government Industrial Tribunal
(No. 2) at Dhanbad.

APPENDIX II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2)
AT DHANBAD

REFERENCE No. 35 OF 1967

Employers in relation to the 6 and 7 pits Jamadoba Colliery of Messers Tata Iron & Steel Company Ltd., Jamadoba, P.O. Jealgora, Dist. Dhanbad

AND

Their Workmen

List of witness examined for the Employers

No. of Witness	Name of witness	Date of examination
MW11	Lal Bhari Mahato	27-2-68

List of witness examined for the Workmen

No. of witness	Name of witness	Date of examination
WW 1	Narayan Mahato	27-2-68

(Sd.) N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal
(No. 2) at Dhanbad.
[No. 2/112/65-LRII.]

New Delhi, the 14th May 1968

S.O. 1835.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the M/s. Shaw Wallace & Co. Ltd., P.O. Parasia, District Chhindwara (M.P.) and their workmen, which was received by the Central Government on the 2nd May, 1968.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR.**

Dated April 24, 1968

PRESENT:

Sri G. C. Agarwala—Presiding Officer.

CASE REF. No. CGIT/LC(R) (146) OF 1967

PARTIES:

Employers in relation to Messrs Shaw Wallace & Company, Parasia, District Chhindwara (M.P.).

Vs.

Their workmen, Sri Bachoolal Yadav, Loading Supervisor, M/s. Shaw Wallace and Co. Ltd. at Bhamori Colliery, P.O. Parasia, District Chhindwara (M.P.).

APPEARANCES:

For employers.—S/Sri V. M. Thakuraaney, Chief Personnel Officer & Sardar Ujagar Singh, Labour Officer of M/s. Shaw Wallace & Company.

For workman.—Shri S. K. Pachori, Member Executive of M. P. Rashtriya Koyla Khadan Mazdoor Sangh, Chandametha, Parasia,

Industry: Coal Mine.

District: Chhindwara (M.P.)

AWARD

By Notification No. 5/47/67-LRII, dated 21st October, 1967 the Ministry of Labour, Employment and Rehabilitation (Department of Labour & Employment) referred the following matter of dispute as stated in the schedule to the order of reference, to this Tribunal for adjudication:—

Matter of Dispute

Whether the management of M/s. Shaw Wallace & Co. Ltd., Parasia, was justified in retiring Shri Bachoolal Yadav, Loading Supervisor, at the age of 58 years on account of superannuation, with effect from the 1st August, 1967, without having any provision therefor in the certified standing orders applicable to the establishment. If not, to what relief is the workman entitled?

2. Sri Bachoolal Yadav was Loading Supervisor in the Head Office of the employers at Parasia looking after the loading of coal of different collieries in

the Parasia Coalfield. By letter (copy Ex. E/2) he was informed that as he had attained the age of superannuation he would be retired from 1st August, 1967 and was required to fill up pension/gratuity form. It was stated that if he was found entitled he would be considered for the same. Sri Bachoolal Yadav complained under Sec. 2A I.D. Act to the Conciliation Officer that he could not be retired and conciliation having failed resulted in this reference.

3. After parties filed their pleadings, the following additional issues were framed for determination:—

Addl. Issues.

- (i) Whether Sri Bachoolal is not a workman for reasons given in paragraphs 1 and 4 of the written statement of the employers. Could he raise a dispute under Section 2A of I.D. Act?
- (ii) Has this Tribunal no jurisdiction for reasons mentioned in paragraph 2 of the employers written statement?
- (iii) Could the employers retire him for reasons mentioned in paragraphs 3, 5, 6 and 7 of the written statement of the employers, as also on the basis of the prevailing practice as stated in paragraph 5 of the employers rejoinder?

Findings:—

4. Issue No. 1.—In paragraph 1 of the written statement, it was stated that retired persons were not workmen and are not covered by the definition as contained in Sec. 2(s) of the I.D. Act. This is based on a misconception. I considered this question in another case of the same employers, Case No. CGIT/LC(R) (123)/67 the award of which has been published in the Gazette. The following quotation is relevant on the point. This disposes of the first question.

"In the first place, as adverted to earlier, the forced retirement of a workman is tantamount to discharge and is therefore covered by the definition of "workman" under Sec. 2(s). It amounts to termination of service and in all reported cases it had been so treated. No argument was ever advanced in any reported case by any employer (*vide* Guest, Keen, Williams Private Ltd., Calcutta Vs. P. J. Sterling and others, reported in A.I.R. 1959 (S.C.) p. 1279; Workmen of Kettlewell and Co. Vs. Kettlewell Bullen & Co., 1964 (ii) LLJ p. 146; and 1960 (ILLJ p. 501, Bengal Nagpur Cotton Mills Ltd., Vs. Bastian. In all these cases of the Hon'ble Supreme Court termination on retirement was assumed as termination of service by discharge and presumably on that ground no argument was conceived and advanced as is done in this case."

5. In para 4, it was stated that Sri Bachoolal Yadav was holding a supervisory post and was, therefore, not a workman. This is again a frivolous plea. Sardar Ujagar Singh (E.W. 1) the only witness of the employers admitted that the wages of Sri Bachoolal were less than Rs. 500/- per month. That being so, he is covered by Clause (4) of Sec. 2(s) I.D. Act. There is no merit in the plea.

6. Issue No. 2.—In paragraph 2 of the written statement it was stated that the retirement is not a matter covered by the III Schedule of Sec. 7A of the I.D. Act and therefore this Tribunal has no jurisdiction. A similar plea was taken in case CGIT/LC(R) (123)/67 by the employers which dealt with a question of right of the employers to retire their workmen in the collieries and in particular 34 workmen named in the schedule. An issue on the subject was framed in that case and the following quotation from the finding of the issue will dispose of the objection:—

"The argument is clearly misconceived. The validity of retirement is a matter covered under the Second Schedule item 3 which deals with discharge or dismissal. Under Section 10(1)(d) any dispute which is covered by either Second Schedule or Third Schedule can be referred to a Tribunal and therefore there is no infirmity in the reference to this Tribunal. Apart from this, the Tribunal is also a Labour Court and from that point of view all matters enumerated in either Second Schedule or Third Schedule fall within the jurisdiction of this Tribunal-cum-Court."

7. Issue No. 3.—In paragraph 3 it was stated that Sri Bachoolal was retired because he had attained the age of superannuation. In paragraph 5 it was stated that work in coal industry is hard and hazardous and therefore retirement

was in own interest of the worker. In paragraph 6, it was stated that in some other neighbouring collieries there had been a retiring age of superannuation which was 55 for Ballarpur Colliery and 58 years for A.C.C. Collieries at Kotma and Nowrozabad, as also in public sector collieries of N.C.D.C. In paragraph 7, it was stated that the retired workers were compensated with retirement benefits like pension and gratuity scheme. These averments in the written statement of the employers have hardly any relevancy. The admitted position is that there is no provision for retirement in the certified standing orders. Sri Bachoolal has not been retired because of physical incapacity or for any other reason except for his attaining the age of 58 years. Sardar Ujagar Singh (E.W. 1) tried to introduce a new fact that there was an old prevailing practice with the company. In the first place, there is no proof of prevalence of such a practice except for a bare statement of Sardar Ujagar Singh. In the second place, such a practice, if at all existing must have been an unilateral act on the part of the employers and not by agreement. A similar plea was raised by the employers in the above referred case CGIT/LC(R)(123)/67 in which some evidence was also tendered. The perusal of the award would show that no such practice was established and the conclusion is contained in paragraph 15 of the award. No practice is established and even if there be any it is an unilateral act on the part of the employers. Offer of pension or gratuity and it's acceptance by the workers concerned can only be on voluntary basis. No pension or gratuity scheme has been filed in this case and Sri Bachoolal obviously is not interested to accept the same even if the employers are prepared to give him some compensation in the form of pension or gratuity. There was no provision for retirement in the contract of service and in the absence of any such provision in the standing orders to retire an employee, the employers cannot retire Sri Bachoolal.

Decision:

The employers were not justified in retiring Sri Bachoolal Yadav on his attaining the age of 58 years with effect from 1st August, 1967 without any provision therefore in the certified standing orders and Sri Bachoolal Yadav is entitled to be reinstated with back wages and continuity of service. He shall be paid a sum of Rs. 100 - as costs of proceedings by the employers.

Sd/- G. C. AGARWALA,
Presiding Officer.
24-4-1968.

[No. 5/60/67-LRIL.]

S.O. 1836.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Hindustan Lalpeth Colliery, Chanda and their workmen, which was received by the Central Government on the 8th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Dated April 25, 1968

PRESENT:

Sri G. C. Agarwala—Presiding Officer.

CASE REF. No. CGIT/LC(R) (152) OF 1967.

PARTIES:

Employers in relation to Hindustan Lalpeth Colliery, Chanda (Maharashtra).

Vs.

Their workmen represented through the President, Maharashtra Colliery Workers' Union, Ballarpur.

APPEARANCES:

For employers.—Sri H. R. Bajaj, Asstt. Manager.

For workmen.—Sri D. P. Kawadkar, President of the Union.

Industry: Coal Mine.

District: Chanda (Maharashtra).

AWARD

By Notification No. 5/60/67-LRIL, dated 8th December 1967, the Ministry of Labour, Employment & Rehabilitation (Department of Labour and Employment),

Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

Is the management of Hindustan Lalpeth Colliery justified in terminating the services of Shri Malkhansingh, Coal-cutter, on the strength of the certificate of unfitness dated the 6th March 1967 of the Civil Surgeon, Chanda? If not, to what relief is Shri Malkhansingh entitled?

The workman concerned Sri Malkhansingh was in service of this Colliery, Hindustan Lalpeth Colliery for about seven years as a Coal-cutter. The management gave a notice to him and twenty others under Sec 9A I.D. Act on 25-2-67 (Ex. W/1) stating that as the excavation work in Mine No. 2 was nearing completion they had to be transferred on another job. They were offered the job of Coal Filler. Before the notice period could expire these coal cutters were sent to Civil Surgeon, Chanda, for medical examination. The Civil Surgeon sent a certificate to the management, true copy of which is Ex. E/1 dated 18-2-67, stating that he had examined Sri Malkhansingh on 28-2-67, without giving the details of examination he made a cryptic statement in following words "In my opinion he is suffering from Anaemia, General debility & Hyper-Tension. He is unfit for duty." On the strength of this certificate the management terminated the services of Sri Malkhansingh. It may be mentioned that no retrenchment compensation was offered or paid and no formalities of retrenchment as required by Sec. 25F was complied with. The termination notice (copy Ex. W/2) runs as follows:—

"It is regretted that it has become necessary for us to terminate your services as you have been found physically unfit by the Civil Surgeon Chandrapur on 28-2-1967, to carry out your further duties due to infirmity on account of old age.

Moreover there are no prospects in the foreseeable future of your being fit to do so.

Under these circumstances, your services are terminated with effect from 17th March 1967 under section 2(00)C of the Industrial Dispute Act 1947 and Rule 14(a) & 15 of the Standing Orders.

You are further advised to deposit all materials issued to you and collect your dues from the office immediately on any working day."

The Union, Maharashtra Colliery Workers' Union, Ballarpur, Distt. Chanda, took up the dispute in conciliation. During conciliation the President of the Union, Sri D. P. Kawadkar, wanted a copy of the certificate from the Civil Surgeon but it was denied and he was intimated by letter dated 23rd September, 1967 (copy Ex. W/7) to obtain the certificate from the Manager of the Colliery. From a communication of the Asst. Labour Commissioner copy Ex. W/3, it appears that he approached the Civil Surgeon and the Civil Surgeon failed to clarify his certificate. He advised the management to reemploy the workman. It further appears that the workman taken again to the Civil Surgeon presumably through the Union and the Conciliation Officer and as the copy of the out-door ticket dated 13-9-67 (Ex. W/3) would reveal he was subjected to certain tests like X-ray, Urine and blood examination. Nothing abnormal was found in the workman. Even then the Civil Surgeon failed to give another certificate. The conciliation then having failed resulted in this reference.

8. The stand taken by the Union is that the workman was a piece rated worker and was being paid at Rs. 28/- per week as consolidated wages and as stated by the workman himself a union was formed and he became an active member. This caused discontentment among workers and as stated by the workman himself a union was formed and he became an active member. The termination of service of the workman was mala fide in order to get rid of him and to avoid payment of compensation if he had been retrenched. He was physically fit and had neither been medically examined nor was given any treatment before declaring him medically unfit. He is, therefore, entitled to be reinstated. The management while denying the allegation of mala fides alleged that on the ground of medical unfitness they were entitled to terminate the services.

4. It is manifest that the management acted in a most arbitrary manner and the termination was wholly unjustified. The workman concerned Sri Malkhansingh, came in evidence and stated that the Civil Surgeon did not examine him at all and did not even touch his body. When he appeared for evidence

before this Tribunal, he appeared to be quite stout, healthy and not in the least anemic. The Civil Surgeon who gave the certificate of unfitness gave no material or data on the basis of which he recorded his opinion that he was anemic and was suffering from general debility or hyper tension. It is just a perfunctory opinion. When he was again examined nearly nine months after in September, 1967 on the agitation by the union and through the intervention of Conciliation Officer he was subjected to clinical test and nothing abnormal was found. It is surprising that the Civil Surgeon even then failed to revise his opinion or to commit himself one way or the other. No evidence was produced on behalf of the employers in rebuttal to the oral evidence of the workman concerned. Only a statement prepared from bonus registers (Ex. E/3) was filed for the period January, 1966 to March, 1967 in which he was recorded to have been on leave for 35 days and sick leave for 33 days. The workman denied that he was sick at all. It was suggested that he obtained payment for sick leave which may have been so but that does not necessarily mean that he was really sick. From Form B Register, the extract of which was filed by the management he has not even reached the age of superannuation when his services were terminated. In terminating his service the management in the notice took their stand of Sec. 2(00)C of the I.D. Act and Rule 14(a) and 15 of the Standing Orders. None of them is attracted. Sec. 2(00)C I.D. Act is the definition for retrenchment. It envisages "termination of the service of a workman on the ground of continued ill health". Obviously, there had been no continued ill health. Further no formalities of Sec. 25F were complied with nor any retrenchment compensation was offered and paid. Clause 15 of the Standing Orders relates to retirement on attaining the age of 58 years. He had not attained the age of 58 years when his services were terminated. The own record of the management Form B Register of which an extract (Ex. E/2) filed, mentions his age as 57 years at the time of termination. The entry is, however, disputed by the workman. Clause 14(a) of the Standing Orders is inapplicable in the case of Sri Malkhansingh as he had put in more than one year's service. It deals with permanent workman having less than one year continuous years. He had put in more than one year's service. The management's representative failed to show under what provision of the Standing Orders could the services of Sri Malkhansingh be terminated.

Decision:—

The result is that the termination of the services of Sri Malkhansingh with effect from 17-3-67 on the strength of the medical certificate of the Civil Surgeon was wholly unjustified and the workman concerned is entitled to be reinstated with back wages and continuity of service. The Union will be entitled to Rs 100/- as costs from the employers.

(Sd.) G. C. AGARWAL.
Presiding Officer
25-4-1968.

[No. 5/60/67-LR.II/

S.O. 1837.—In pursuance of section 17 of the Industrial Disputes Act 1947 (11 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Bhadra Colliery of Messrs Rewa Mining Company Limited, Post Office Kotma, District Shahdol (Madhya Pradesh) and their workmen, which was received by the Central Government on the 8th May, 1968.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT.
JABALPUR.**

Dated April 30, 1968

PRESENT:

Sri G. C. Agarwala—Presiding Officer.

CASE REF. No. CGIT/LC(R) (13) OF 1968

PARTIES:

Employers in relation to the Management of Bhadra Colliery of Messrs Rewa Mining Company Limited, Post Office, Kotma, Distt. Shahdol (Madhya Pradesh)

Vs.

Their workmen represented through The General Secretary, Colliery Mazdoor Union, P.O. Birsinghpur-Pali, District Shahdol (M.P.)

APPEARANCES:

For workmen.—Sri G. C. Jaiswal, General Secretary.

For employers.—None.

Industry: Coal Mine.

District: Shahdol (M.P.)

AWARD

By Notification No. 5/85/67-LR.II, dated 30th January 1968, the Ministry of Labour, Employment & Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

Whether the action of the management of Bhadra Colliery of Messrs Rewa Mining Company Limited in suspending the following workmen from the 7th March, 1967 to the 16th March, 1967 was justified? If not, to what relief are they entitled?

1. Shri Moti Singh S/o Mangal Singh, Trammer.
2. Shri Sabhapat S/o Narbada Prasad, Trammer.
3. Shri Vishwanath Prasad S/o Kamala Prasad, Haulage Driver.

2. After receipt of the reference order, the statements of claim were awaited for the prescribed period as laid down in Rule 10B of Industrial Disputes (Central) Rules. When no such statement was received from either side notices were, however, issued on 24th February, 1968 requiring the parties to file statements of claim and fixing 12th March, 1968. The Union representative appeared and filed the statement of claim but none appeared for the employers. One more chance was given to employers to file statement of claim within 15 days and 17th April, 1968 was fixed. Meanwhile, their statement of claim was also received. When the case was taken up on 17th April, 1968 neither party appeared but as the written statements of both sides had been received and it appeared that copies had been exchanged they were directed to file rejoinder on 30th April, 1968 which was also fixed for preliminary hearing. Parties were duly informed about it. When the case was taken up on this date neither party appeared. It is however, not necessary to wait and adjourn hearing.

3. The dispute is a simple one. On the basis of certain charge-sheets dated 6th March, 1967 these three concerned workmen were suspended from 7th March, 1967. From the conciliation failure report and the statements of claim filed both by the Union and the management it appears that initially an enquiry was conducted by the then Manager of the Mine, Sri D. L. Khanzode. Before recording his finding he resigned and another Manager, Sri H. S. Bapna, took over on 27th June, 1967. He has not been able to conclude the enquiry. The enquiry is, therefore, still pending and has not been concluded. There is nothing to indicate on record and has not been shown by the Union that the enquiry has been concluded and the suspension from 7th March, 1967 to 16th March, 1967 was held to be a punishment. This suspension for ten days was not a punishment but pending enquiry, a right which the employers seem to possess under the Standing Orders. Since the enquiry was getting delayed the management reinstated the three concerned workmen on 17th March, 1967. Whether the suspension was justified or not will depend on the conclusion of the enquiry and the finding of the management. The reference, therefore, is premature.

Result:—

4. The result is that until the enquiry is concluded and the management has recorded a finding on the charge-sheets, it is not possible to say whether suspension from 7th March, 1967 to 16th March, 1967 was or was not justified. No order for costs.

Sd./- G. C. AGARWALA,
Presiding Officer.
30-4-1968.

[No. 5/85/67-LR.II.]

New Delhi, the 16th May 1968

S.O. 1838.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Presiding Officer, Central Government Industrial Tribunal (No. 2), Dhanbad, in the matter of an application under section 33A of the said Act, from the workers of Dhori Colliery, represented by Shri Shankar Bose, Secretary, Colliery Mazdoor Sangh which was received by the Central Government on the 14th May, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

In the matter of a complaint under Section 33 A of the Industrial Disputes Act, 1947 (XIV of 47) in the matter of Reference No. 40 of 1967.

No. 82 of 1965.

Complaint No. 1 of 1967.

PARTIES:

Ehri Nandagiri Venkata Rao.—*Presiding Officer.*

APPEARANCES:

For the complainants.—Shri Shankar Bose, Secretary, Colliery Mazdoor Sangh.

For the opposite party.—Shri D. Narsingh, Advocate.

STATE: Bihar.

INDUSTRY: Coal.

AWARD

This is a complaint filed before the Central Government Industrial Tribunal, Dhanbad under Section 33(A) of the Industrial Disputes Act, 1947 by the workmen of Dhori Colliery against the employers in relation to the colliery alleging contravention by the employers of Section 33 of the Industrial Disputes Act, 1947. The complaint was filed pending reference No. 82 of 1965 on the file of the Tribunal. The Tribunal registered the complaint on its file as complaint No. 14 of 1965. The Central Government transferred the complaint by its order No. 8/25/67-LRII dated 8th May, 1967 under Section 33 B(1) of the Industrial Disputes Act, 1947, to this Tribunal. Consequently, this Tribunal renumbered the complaint on its file as complaint No. 1 of 1967.

2. The complainants, workmen are represented by Shri Shankar Bose, Secretary, Colliery Mazdoor Sangh and both the opposite parties by Shri D. Narsingh, Advocate. On behalf of the complainants an application is submitted to permit them to withdraw the complaint. The opposite parties have no objection. The application is allowed and the complainants, workmen are permitted to withdraw the complaint. The complaint is, therefore, dismissed as withdrawn. No order is passed as to costs. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

President Officer,
Central Government Industrial Tribunal
(No. 2) at Dhanbad.

APPENDIX i

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

COMPLAINT NO. 1 OF 1967

Workmen of Dhori Colliery Vs. Management of Dhori Colliery.

List of Documents Admitted in Evidence for the Employers

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved.	Proved by
NIL	NIL	NIL	NIL	NIL

List of Documents Admitted in Evidence for the Workmen

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

Sd./- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal
(No. 2) at Dhanbad.

APPENDIX II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.

COMPLAINT NO. 1 OF 1967

Workmen of Dhori Colliery Vs. Management of Dhori Colliery.

List of witness Examined for the Employers

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

List of witness Examined for the Workmen

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

Sd./- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal
(No. 2) at Dhanbad.
[No. 2/24/65-LRII.]

S.O. 1839.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, No. 2, Dhanbad, in the industrial dispute between the employers in relation to the Pure Dhansar Colliery, Post Office, Dhansar, District Dhanbad, and their workmen, which was received by the Central Government on the 14th May, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947,

REFERENCE NO. 115 OF 1967.

PARTIES:

Employers in relation to the Pure Dhansar Colliery, Post Office Dhansar, District Dhanbad.

AND
Their workmen.

PRESENT:

Shri Nandagiri Venkata Rao.—*Presiding Officer.*

APPEARANCES:

For the employers.—Shri S. S. Mukherjee, An Executive Committee Member of Indian Collieries Owners' Association.

For the workmen.—Shri Prasanta Burman, Secretary, Khan Mazdoor Congress.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, dated 6th May, 1968.

AWARD

The Central Government, being of the opinion that an industrial dispute exists between the employees in relation to the Pure Dhansar Colliery, Post Office Dhan sar, District Dhanbad and their workmen by its order No. 2/1/66-LRII dated 1st August, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

"SCHEDULE

Whether the suspension of the following underground trammers by the management of the Pure Dhansar Colliery for five days with effect from the 19th October, 1965, were justified? If not, to what relief are these workmen entitled?

1. Shri Sita Ram Gope
2. Shri Jagannath Gope
3. Shri Jago Gope
4. Shri Bandhan Munda.
5. Shri Sanichar Rewani."

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 38 of 1966 on its file. Workmen filed their statement of demands but no statement of demands was filed by the employer. While it was pending before the Central Government Industrial Tribunal, Dhanbad the proceeding was transferred to this Tribunal by the Central Government by its order No. 8/25/67-LRII dated 8th May 1967 under Section 33 B(1) of the Industrial Disputes Act, 1947. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 115 of 1967.

3. The workmen were represented by Shri Prasanta Burman, Secretary, Khan Mazdoor Congress and the employers by Shri S. S. Mukherjee, an Executive Committee Member of Indian Collieries Owners' Association. On behalf of the employers an application was submitted along with the payment sheet, stating that they have settled the dispute with the 5 affected workmen and have paid the wages to them for the 5 days. The contents of application were duly verified. Shri Prasanta Burman has admitted that the dispute has been settled and that the affected workmen have been paid their wages to their satisfaction. Thus, there is no more dispute left for enquiry. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

Sd./- N. VENKATA RAO,
Presiding Officer,

Central Government Industrial Tribunal (No. 2)
at Dhanbad.

APPENDIX I

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.

REFERENCE No. 115 of 1967

Employers in relation to the Pure Dhansar Colliery, Post Office Dhansar,
District Dhanbad.

AND

Their workmen.

List of Documents Admitted in Evidence for the Employers

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

List of Documents Admitted in Evidence for the Workmen

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

Sd./- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal (No. 2)
at Dhanbad.

APPENDIX II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.

REFERENCE No. 115 of 1967

Employers in relation to the Pure Dhansar Colliery, Post Office Dhansar,
District Dhanbad.

AND

Their workmen.

List of witness Examined for the Employers

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

List of witness Examined for the workmen

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

Sd./- N. VENKATA RAO,
Presiding Officer,

Central Government Industrial Tribunal (No. 2)

at Dhanbad.

[No. 2/1/66-LRII.]

S.O. 1840.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Power House, Jamadoba Colliery of Messrs Tata Iron and Steel Company Limited, Jamadoba, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 14th May, 1968.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.**

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

REFERENCE NO. 112 OF 1967

PARTIES:

Employers in relation to the Power House, Jamadoba Colliery of Messrs Tata Iron and Steel Company Limited, Jamadoba, P.O. Jealgora, District Dhanbad.

AND

Their workmen.

PRESENT:

Shri Nandagiri Venkata Rao.—*Presiding Officer.*

APPEARANCES.

For the employers.—Shri L. H. Parvatiyar, Legal Assistant.

For the workmen.—Shri Pritish Chanda, President, Tata Collieries Workers Union.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, dated 6th May, 1968.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Power House, Jamadoba Colliery of Messrs Tata Iron and Steel Company Limited, Jamadoba, P.O. Jealgora, Distt., Dhanbad and their workmen by its order No. 2/24/66-LRII dated 23rd February, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

"SCHEDULE

Whether the dismissal of Shri Sheoji Choubey, Deacrating Plant Attendant, Power House, Jamadoba, by the Management of 6 and 7 Pits Jamadoba Colliery of Messrs. Tata Iron and Steel Company Limited with effect from the 14th June, 1965, was justified? If not, to what relief is the workman entitled?"

2. The Central Govt. Industrial Tribunal Dhanbad registered the reference as reference 34 of 1966 on its file. While it was pending before the Central Government Industrial Tribunal, Dhanbad the proceeding was transferred to this Tribunal by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967, under Section 33 B(1) of the Industrial Disputes Act, 1947. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 112 of 1967. Employers filed their statement of demands.

3. On 3rd May, 1968, the workmen were represented by Shri Pritish Chanda, President, Tata Collieries Workers Union and the employers by Shri L. H. Parvatiyar, Legal Assistant. Shri Pritish Chanda reported that the affected workman, Shri Sheoji Choubey is since dead. When the affected workman himself is no more alive, the dispute involved in the reference cannot be considered as continuing. Consequently no further enquiry is required. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

Sd./- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal (No. 2)
at Dhanbad.

APPENDIX I.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

REFERENCE No. 112 OF 1967.

Employers in relation to the Power House, Jamadoba Colliery of Messrs
Tata Iron and Steel Company Limited, Jamadoba, P.O. Jealgora,
District Dhanbad.

AND

Their workmen.

List of Documents Admitted in Evidence for the Employers

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

List of Documents Admitted in Evidence for the Workmen

Distinguishing mark or number	Description of document & date	Date of admission	Whether admitted or proved	Proved by
NIL	NIL	NIL	NIL	NIL

Sd./- N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal (No. 2)
at Dhanbad.

APPENDIX II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

REFERENCE No. 112 OF 1967

Employers in relation to the Power House, Jamadoba Colliery of Messrs
Tata Iron and Steel Company Limited, Jamadoba, P.O. Jealgora
District Dhanbad.

AND

Their workmen.

List of witness Examined for the Employers

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

List of witness Examined for the Workmen

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

Sd./- N. VENKATA RAO,
Presiding Officer,

Central Government Industrial Tribunal (No. 2)
at Dhanbad.

[No. 2/24/66-LRII.]

ORDERS

New Delhi, the 13th May 1968

S.O. 1841.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs Shaw Wallace and Company Limited, Parasia District Chhindwara (Madhya Pradesh) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

NOW, THEREFORE, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Jabalpur, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Messrs Shaw Wallace and Company Limited, Post Office Parasia, District Chhindwara (Madhya Pradesh) in retiring Shri Manjoo son of Dhunda, Timberman of Datla West Colliery with effect from the 1st September, 1966, in the absence of fixed pension or gratuity scheme and in the absence of any provision in their Standing Orders to this effect, is justified? If not, to what relief is the workman entitled.

[No 5/80/67-LR.II.]

New Delhi, the 18th May 1968

S.O. 1842.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Sial Ghogri Colliery, Post Office Junnordeo, District Chhindwara (Madhya Pradesh) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Jabalpur, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Sial Ghogri Colliery, Post Office Junnordeo, District Chhindwara (Madhya Pradesh) in stopping the

workmen *viz.*, Sarvashri Ganpat, Eohan, Surjlal and Horilal, tub-loaders, from service with effect from the 9th January, 1968 was justified? If not, to what relief are these workmen entitled?

[No. 5/5/68-LRII.]

S.O. 1843.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Pure Kajora Colliery of Messrs East Barakar Coal Company (Private) Limited, Post Office Kajoramgram, District Burdwan (West Bengal) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Pure Kajora Colliery of Messrs East Barakar Coal Company (Private) Limited, Post Office Kajoramgram, District Burdwan was justified in refusing employment to Sarvashri Asgar Ali and Sk. Salim, Masons with effect from the 11th September, 1967? If not, to what relief are the workmen concerned entitled?

[No. 6/97/67-LRII.]

New Delhi, the 20th May 1968

S.O. 1844.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Dalia West Colliery of Messrs Shaw Wallace and Company Limited, Post Office Parasla, District Chhindwara (Madhya Pradesh) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Jabalpur, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Messrs Shaw Wallace and Company Limited, Post Office Parasla, District Chhindwara (Madhya Pradesh), in retiring their workman Shri Jeetoo son of Vishroo, Underground Trammer of Dalia West Colliery with effect from the 1st September 1966, in the absence of any fixed pension or gratuity scheme and in the absence of any provision in their Standing Orders to this effect was justified? If not, to what relief is the workmen entitled?

[No. 5/79/67-LRII.]

CORRIGENDUM

New Delhi, the 18th May 1968

S.O. 1845.—In the Order of the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1243, dated the 18th April, 1966 published at pages 1173 to 1174 of the Gazette of India, Part II, Section 3, Sub-Section (ii), dated the 23rd April, 1966

In line 5 and Serial No. 1 of the Schedule, for "Shri Abhi Biswas, Pump Khalasi, E.B. No. 15027" read "Shri Abani Biswas, Pump Whalasi, E.B. No. 15027".

[No. 2/37/66-LRII.]

BALWANT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 15th May 1968

S.O. 1846.—In exercise of the powers conferred by section 8 of the Minimum Wages Act, 1948 (11 of 1948) read with rule 3 of the Minimum Wages (Central Advisory Board) Rules, 1949, the Central Government hereby makes the following amendments to the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 4523 dated the 2nd December, 1967, namely:—

In the said notification,

- (1) under the heading 'Representatives of Employees' for entry 13, the following entry shall be substituted, namely:—

"13. Shri Probin Goswami, General Secretary, Assam Chah Mazdoor Sangh, P.O. Dibrugarh." Member

- (2) Under the heading 'Representatives of Employers' for entry 28, the following entry shall be substituted, namely:—

"28. Shri V. G. Bhaskaran Nair, M/s. Peirce Leslie & Co. Ltd., Cochin-1." Member

[No. LWI (1)6(16)/68.]

C. R. NAIR, Under Secy.

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

New Delhi, the 2nd May 1968

S.O. 1847.—Whereas the Central Government is of the opinion that it is necessary to acquire the evacuee properties specified in the schedule hereto annexed in the States of Punjab and Haryana for a public purpose being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons.

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (44 of 1954), it is

notified that the Central Government has decided to acquire and hereby acquires the evacuee properties specified in the schedule hereto annexed.

THE SCHEDULE

All properties in the States of Punjab and Haryana which have been vested in the Custodian under section 11 of the Evacuee Interest (Separation) Act, 1951, as a result of adjudication by the Competent Officer under the provisions of the said Act upto 31st March, 1968 in respect of which appeals have not been filed, and if filed, have been rejected by the Appellate Officer concerned.

[No. F. 16(18)/58/Prop.II./Comp.]

S.O. 1848.—Whereas the Central Government is of the opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in the State of Uttar Pradesh for a public purpose being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons.

Now, therefore, in exercise of the powers conferred by Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire and hereby acquires the evacuee properties specified in the Schedule hereto annexed.

SCHEDULE

All properties in the State of Uttar Pradesh which have vested in the Custodian under Section 11 of the Evacuee Interest (Separation) Act, 1951 as a result of adjudication by the Competent Officer, under the provisions of said Act, upto 31st March, 1968, and in respect of which no appeals have been filed and if filed, have been rejected by the Appellate Officer.

[No. F. 2(21)Comp.&Prop./61.]

S.O. 1849.—Whereas the Central Government is of the opinion that it is necessary to acquire the evacuee properties specified in the schedule hereto annexed in the State of Rajasthan for a public purpose being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons.

Now, therefore, in exercise of powers conferred by Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (44 of 1954), it is notified that the Central Government has decided to acquire and hereby acquires the evacuee properties specified in the schedule hereto annexed.

A SCHEDULE

All properties in the State of Rajasthan which have vested in Custodian under Section 11 of the Evacuee Interest (Separation) Act, 1951, as a result of adjudication by the Competent Officer under the provisions of the said Act, upto 31st March, 1968 and in respect of which no appeals have been filed, and if filed, have been rejected by the Appellate Officer.

[No. F. 22(13)/Comp.&Prop./61.]

A. G. VASWANI,
Settlement Commissioner & Ex-Officio, Under Secy.

ELECTION COMMISSION, INDIA

New Delhi, the 8th March 1968

S.O. 1850.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 1st, 4th, 5th and 6th December, 1967 by the High Court of Mysore at Bangalore in Election Petition No. 3 and 6 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE

Dated the 1st, 4th, 5th and 6th December, 1967.

The Hon'ble Mr. Justice A. Narayana Pai.

Election Petitions Nos. 3 and 6 of 1967.

E.P. No. 3/67:

Shivamurthiswamy Siddappayaswamy Inamdar, aged about 45 years, land-lord, residing at Alwandi, Taluka Koppal, District Raichur (Mysore State).—*Petitioner.*

Vs.

Agadi Sanganna Andanappa, aged about 55 years, Businessman, residing at Koppal, District Raichur.—*Respondent.*

Election petition filed by the petitioner under Section 81 of the Representation of the People Act, 1951 challenging the election of the Respondent to the House of the People from the Koppal Parliamentary Constituency at the 1967 General Elections and seeking an order that the Election of the Respondent be declared void and that it be further declared that the petitioner has instead been duly elected. The petitioner further prays for other incidental reliefs inclusive of the costs of this petition.

This Election Petition coming on for trial on 13th Monday, 14th Tuesday, 15th Wednesday, 16th Thursday, 17th Friday, 20th Monday, 21st Tuesday, 22nd Wednesday, 23rd Thursday, 24th Friday, 27th Monday, 28th Tuesday, 30th Thursday of November, 1967, in the presence of Shri B. S. Patil, and Smt. Pramila, Advocates for the petitioner and Sri D. Venugopala Chari, Sri K. A. Swamy, Sri S. Shivaswamy Advocates for respondent and this Election Petition having stood over for consideration, the Court made the following Order this 1st, 4th, 5th and 6th day of December, 1967.

E.P. No. 6/67:

Veerabhadrappa Veerappa, aged about 60 years Agriculturist residing at Adur, Taluka Yelburga, District Raichur (Mysore State).—*Petitioner.*

Vs.

1. Chanbasagouda Hanmantagouda, aged about 35 years, Contractor, residing at Yelbarga, Taluka Yalburga, District Raichur (Mysore State).—*Respondent.*

2. Arifuddin Khaji, aged about 55 years, Agriculturist, residing at Kuknur Taluka Yalburga, District Raichur, Mysore State.—*Respondent.*

Election Petition filed by the Petitioner under Section 81 of the Representation of the People Act, 1951, challenging the election of the respondent No. 1 to the Mysore Legislative Assembly from Yalburga Constituency in the General Elections and seeking an order that the Election of the Respondent No. 1 be declared void. The Petitioner further prays that he be awarded the costs of this petition.

This Election Petition coming on for trial on 13th Monday, 14th Tuesday, 15th Wednesday, 16th Thursday, 17th Friday, 20th Monday, 21st Tuesday, 22nd Wednesday, 23rd Thursday, 24th Friday, 27th Monday, 28th Tuesday, 30th Thursday of November, 1967, in the presence of Sri B. S. Patil and Smt. Pramila, Advocates for the petitioner and Sri D. Venugopalachary and Sri K. A. Swamy, Advocates for respondent No. 1, Sri N. C. Mahajan, Advocate for Respondent No. 2 and this Election Petition having stood over for consideration, the Court made the following order this 1st, 4th, 5th and 6th day of December, 1967.

ORDER

Both these Election Petitions arise out of the General Elections held in January—February, 1967. Election Petition 3 of 1967, relates to the election to the

Lok Sabha from the Koppal Parliamentary Constituency. That constituency comprises eight Mysore Assembly constituencies, viz., Yelburga, Koppal, Kushtagi, Gangavathi and Sindhanoor of Raichur District, Hospet and Hadagali of Bellary District, and Mundargi of Dharwar District. Election Petition 6 of 1967, relates to the election to the Mysore Legislative Assembly from the Yelburga Constituency.

2. In the Koppal Parliamentary Constituency, the contesting candidates were Shivamurthy Swami and Agadi Sanganna, the petitioner and the respondent respectively, in Election Petition 3 of 1967. In the Yelburga Assembly Constituency, the contesting candidates were Sirur Veerabhadrappe the petitioner and Chanbasangouda Hanmanthagouda Patil and Arifuddin Khaji, respondents 1 and 2 respectively, in Election Petition 6 of 1967.

3. The notification calling for election was published on 15th January, 1967; 19th January, 1967, was the last date for presentation of nominations, and the 21st January, 1967, the date fixed for scrutiny of the nominations. Poll was held on 19th February, 1967.

4. In the Koppal Parliamentary Constituency, Agadi Sanganna was elected by a majority of 24,602 votes. In the Yelburga Constituency, C.H. Patil was elected by a majority of 10,130 votes over the votes secured by his next immediate rival Sirur Veerabhadrappe, the 2nd respondent Arifuddin Khaji securing only 742 votes.

5. The petitioners, Sirur Veerabhadrappe and Shivamurthy Swami, belong to a political party called the Lok Seva Sangha, hereinafter referred to as the L.S.S. The respondents, Agadi Sanganna and C. H. Patil, belong to another political party called the Indian National Congress, hereinafter referred to as the Congress. They were the official candidates on behalf of their respective parties at these elections.

6. The petitioners assail the election of the respondents Sanganna and Patil on several grounds. The 2nd respondent in Election Petition 6 of 1967, though he is represented by counsel and filed a short written statement, did not take any active part in the trial. The brief written statement filed by him is generally in support of the case of the 1st respondent C. H. Patil. It will not, therefore, be necessary to make any further reference to him in this order.

7. I shall refer to the parties either as petitioners or as respondents or by their names. The 1st respondent in Election Petition 6 of 1967 is sometimes called Chanbasangouda and sometimes called C. H. Patil in the course of evidence. Throughout this judgment, I shall refer to him as C. H. Patil.

8. The election of Sanganna and C. H. Patil is attacked by the petitioners on similar grounds in these two petitions. The persons, whose activities are said to effect the validity of the election, are the same in both the cases with very small exceptions. Most of these persons belong to Yelburga Constituency. Bulk of the evidence therefore relates to the happenings in the Yelburga Constituency. Some evidence there is, which refers to certain events in Kushtagi and Koppal Constituencies, but that also has a bearing on the election of Patil from the Yelburga Constituency.

9. Having regard to these considerations, the parties as well as their learned counsel agreed that I may record common evidence in Election Petition 3 of 1967, and hear common arguments in both the Petitions. The same considerations make it convenient to dispose of both these petitions by the same order. I proceed to do so.

10. The attacks on the election of the respondents fall into two categories, viz.,—

- (1) disqualifications which the respondents are said to suffer from by reason of their occupying certain positions said to be offices of profit, or by reason of contracts between them and the appropriate Government said to be subsisting on the relevant date; and
- (2) certain corrupt practices said to have been committed either by the respondents themselves or by other persons with their consent, in circumstances sufficient to invalidate the election.

11. Agadi Sanganna is said to be disqualified under Article 102 of the Constitution for being chosen as a member of the Lok Sabha by reason of his having been a member of the Mysore State Khadi and Village Industries Board, of an Advisory Board of the Thungabhadra Irrigation System, of the District Development Council of Raichur and of the Taluk Development Board of the Koppal

Taluk, and the Chairman of the Koppal Taluk Agricultural Produce Marketing Co-operative Society. A certain contract said to have been subsisting on the relevant date between the said Society and the Central Government is also said to operate to disqualify him for being chosen as a member of the Lok Sabha under Section 9A of the Representation of the People Act.

12. C. H. Patil is said to have been on the relevant date a watandar Police Patil and Mulki Patil of Halkeri village in Ron Taluk and therefore disqualified under Article 191 of the Constitution for being chosen as a member of the Mysore Legislative Assembly. It is also said that there was subsisting on the relevant date a particular contract between him and the State Government of Mysore in relation to the construction of a road between Yerehanchinahali and Mudhol in Yelburga Taluk which is said to operate to disqualify him for being chosen as a member of the Mysore Legislative Assembly under Section 9A of the Representation of the People Act.

13. The corrupt practices alleged against both of them are those under sub-sections (3) and (7) of Section 123 of the Representation of the People Act. In addition, C. H. Patil is also said to have been guilty of the corrupt practice of bribery under sub-section (1) of the said section.

14. The corrupt practice under sub-section (3) of Section 123 of the Representation of the People Act of securing or attempting to secure votes by appeal to religion or religious symbols is said to have been committed by one Channappagouda Master of Yelburga by composing some songs, printing and publishing them in a booklet called the Congress Tatva Prachara Padyavali (string of songs for propagating the principles of the Congress), distributing the same in Yelburga Constituency, singing and explaining the songs contained therein and explaining the religious significance of a picture printed on its cover, either in the course of house-to-house canvassing in Yelburga town or in the course of speeches said to have been delivered by him in the propaganda meetings held for the benefit of the respondents in Yelburga town and also in certain villages of Yelburga constituency. The publication itself is said to have been made with the consent of both Agadi Sanganna and C. H. Patil. By publication is meant not merely publishing or distributing the book but also oral publication like singing, speaking about it, etc. One Gadigeppa Desai of Mudhol in Yelburga Taluk, whose name is printed as publisher on the cover of the Padyavali, is described as a person who has lent active support to the respondents by canvassing votes for them. Channappagouda Master himself is said to have been in the position of an agent for purposes of election of both Agadi Sanganna and C. H. Patil.

15. In regard to the corrupt practice under sub-section (7) of Section 123 of the Representation of the People Act, the allegation briefly is that Sanganna obtained or procured the assistance of not merely C. H. Patil who is himself a watandar Police Patil of Halkeri but also certain other persons, viz., Deshpande said to be the Block Development Officer, Kushtagi, Devappa of Rampur said to be a Police Patil of Rampur, Gururao Desai of Malekop said to be the pattedar Patwari of several villages in Yelburga Taluk, Sekharagouda said to be the pattedar Patwari of Bochenahalli in Koppal, Kishenrao Vakil said to be the pattedar police patil of Kudrikotgi in Yelburga taluk, Channappagouda of Mannapur said to be the Gumsta Patwari of Anagondanakop in Yelburga Taluk and Pundangouda said to be the Police Patil of Halkeri village in Ron Taluk, Dharwar District. As against C. H. Patil, the case under this sub-section is that he took the assistance of four out of the seven persons mentioned above, within Yelburga Constituency, viz., Gururao Desai, Kishenrao, Channappagouda and Pundangouda of Halkeri.

16. Now, C. H. Patil himself is a native of Halkeri village. Though he had been some time in Gadag while attending school, he ultimately went over and started residing continuously in Yelburga from the year 1959. The aforesaid Pundangouda and another person called Basangouda are his Bhradars or agnatic relations. It is the said two persons (Pundangouda and Basangouda) who are said to have committed the corrupt practice of bribery. This case of bribery is connected with the case of disqualification by virtue of the road contract of Yerehanchinahali and Mudhol. It is said that Patil had kept in arrears large amounts of wages due to road-workers which was a circumstance, according to the petitioners, operating to the prejudice of his prospects at the election in the villages of Tondihali and Bandhiali to which the road worker are said to belong. The case of bribery is that Basangouda and Pundangouda offered to pay or settle the arrears of wages in dispute on the condition that the villagers of those two villages agreed to cast their votes in favour of C. H. Patil.

17. The respondents in their written statements generally deny the factual statements relied upon by the petitioners in their respective petitions. They also raise a legal contention that the songs contained in the Padyavali of Channappagouda Master do not or may not clearly amount to the corrupt practice described under sub-section (3) of Section 123 of the Representation of the People Act. In regard to the case of corrupt practice under sub-section (7) of section 123, they also raise the legal contention that most of the persons described as persons in the service of the Government may not or do not come within the said description for purposes of the said sub-section.

18. What I have stated above is a complete statement of the essential points in controversy between the parties. As the nature of the controversies and the matters in respect of which the said controversies arise are clearly indicated by the issues framed in the cases, I do not consider it necessary to summarise the pleadings at this stage. The more convenient method would be to refer to the details of the pleadings wherever necessary in the course of the discussion of the evidence and arguments.

19. The issues in Election Petition 3 of 1967 which were amended twice to rectify certain obvious omissions and mistakes are the following:—

- “1. Does the petitioner prove that the respondent is disqualified under Article 102 of the Constitution for being chosen as a member of the House of the People by reason of his having been at the time of the election—
 - (a) a member of the Mysore State Khadi and Village Industries Board,
 - (b) the Chairman of the Koppal Taluk Agricultural Produce Co-operative Marketing Society,
 - (c) a member of an Advisory Board for Thungabhadra Irrigation Development Board, Bangalore,
 - (d) a member of the District Development Council, Raichur, and
 - (e) a member of the Taluk Development Board, Koppal.
2. (a) Does the petitioner prove that there was subsisting on the date relevant for the election a contract between the Koppal Taluka Agricultural Produce Co-operative Marketing Society Limited on the one hand and the Central Government on the other?
- (b) If the answer to (a) is in the affirmative, does the subsistence of the said contract operate as a disqualification under Section 9A of the Representation of the People Act disqualifying the respondent for being chosen as a member of the House of the People?
3. Whether on the basis of the particulars set out in the petition in relation to corrupt practices, the respondent is entitled to claim that no prima facie case has been made out against him and that therefore no issue on the question of any of the corrupt practices can be even framed in the case?

Subject to a finding on issue No. 3, the following are the issues framed:

4. (a) Does the petitioner prove that Channappagouda Master of Yelburga printed and published in Yelburga Constituency a booklet called 'Congress Tatva Prachara Padyavali', and if so, does he further prove that he published the same with the consent of the respondent or his election agent?
- (b) Does the petitioner prove that the said Channappagouda Master acted as an agent of the respondent for the purpose of election?
5. Do the facts proved by the petitioner under issue 4 establish the commission of corrupt practice under Section 123(3) of the Representation of the People Act invalidating the election of the respondent?
6. Does the petitioner prove that the following persons enumerated in the petition are persons in the service of Government within the meaning of Section 123 of the Representation of the People Act?
 - (1) Deshpande said to be a Block Development Officer, Kushtagi.
 - (2) Channabasangouda Hanmangouda Patil.
 - (3) Devappa of Rampur said to be the Police Patil of Rampur in Kush-taggi Taluka.

- (4) Gururayagouda alias Gururaogouda Desi of Malekop, Yelburga taluka, said to be the pattedar Patwari of Yerehanchinahall and other villages.
- (5) Sekharagouda said to be the pattedar patwari of Bochenahalli.
- (6) Kishenrao Vakil said to be the Police Patil of Kudrikotgi.
- (7) Channappagouda of Mannapur said to be the Gumasta Patwari of Anagondanakop; and
- (8) Pundangouda, said to be the Police Patil of Halkeri in Ron Taluka.
7. (a) Does the petitioner prove that the persons mentioned in issue 6 canvassed votes for the respondent at the election?
- (b) Does the petitioner further prove that Sekharagouda also acted as a counting agent of the respondent?
8. Do the facts proved by the petitioner under issue 7 establish the commission of corrupt practice under Section 123(7) of the Representation of the People Act invalidating the election of the respondent?
9. Is the petitioner entitled to an order declaring the election of the respondent void?
10. Is the petitioner entitled to a declaration that he has been validly elected at the election?"
20. The issues in Election Petition 6 of 1967 are the following:
 - "1. Does the petitioner prove that the respondent was on the date relevant to the election a watandar Police Patil and Mulki Patil of Halkeri Village, Ron Taluka?
 2. If the answer to issue No. 1 is in the affirmative, is the respondent for the said reason disqualified under Article 191 of the Constitution for being chosen as a member of the Mysore Legislative Assembly?
 3. Does the petitioner prove that there was subsisting on the date relevant to the election a contract between the respondent and the State Government of Mysore in relation to Yarehanchinal Mudhol Road?
 4. If the answer to issue No. 3 is in the affirmative, is the respondent disqualified under Section 9A of the representation of the People Act for being chosen as a member of the Mysore Legislative Assembly?
 5. Whether on the basis of the particulars set out in the petition in relation to corrupt practices, the respondent is entitled to claim that no prima facie case has been made out against him and that therefore no issue on the question of any of the corrupt practices alleged can be even framed in the case?
 6. (a) Does the petitioner prove that the following persons were on the date relevant to the election persons in the service of the State Government of Mysore?
 - (1) Gururayagouda alias Gururaogouda Desai of Malekop said to be the pattedar Patwari of Yerehanchinal, Binnal, Malekop, etc.
 - (2) Kishenrao Vakil of Yelburga said to be the police patil of Kudrikotgi;
 - (3) Channappagouda of Mannapur said to be the Gumasta Patwari of Anagondanakop, and
 - (4) Pundangouda said to be the Police Patil of Halkeri village in Ron Taluka?
 - (b) Does he prove that the persons named above canvassed vote for the respondent at the election?
 - (c) Does he further prove that they did so with the consent of either the respondent or his election agent?
 7. Do the facts proved by the petitioner under issue 6 establish the commission of corrupt practice under section 123(7) of the Representation of the People Act invalidating the election of the respondent?
 8. (a) Does the petitioner prove that Channappagouda Master of Yelburga printed and published in the Yelburga Constituency a booklet called

'Congress Tatva Prachara Padyavali' and if so, does he further prove that he published the same with the consent of the respondent or his election agent?

(b) Does the petitioner prove that the said Channappagouda Master acted as an agent of the respondent for the purpose of election?

9. Do the facts proved by the petitioner under issue 8 establish the commission of corrupt practice under Section 123(3) of the Representation of the People Act invalidating the election of the respondent?

10. Does the petitioner prove the circumstances set out in paragraph III(D) of the petition and that therefore in the said circumstances the respondent had been guilty of the corrupt practice of bribery within the meaning of section 123(1) of the Representation of the People Act?

11. Is the petitioner entitled to an order declaring that the election of the respondent is void?"

21. Issue No. 3 in Election Petition 3 of 1967 and issue No. 5 in Election Petition 6 of 1967 were taken up for consideration as preliminary issues. By my orders, dated 29th June, 1967, these issues were disposed of. The order in Election Petition 3 of 1967 is exhaustive of all the arguments addressed on these issues on behalf of the parties before me. It is not therefore necessary once again to discuss these issues now. The findings recorded by me are against the respondents could not claim that no *prima facie* case at all arose and that no issues at all could be framed on the merits of the case of corrupt practices.

22. So far as the case of disqualification is concerned, particularly the disqualifications relating to or arising out of the holdings of positions said to be offices of profit by the respondents, most of the facts are beyond controversy. They are either admitted or are disclosed by indisputable documents as well as statutory rules. The evidence therefore in relation to issues on that point is merely in the nature of formal evidence intended apparently to place on record or bring on record all relevant facts.

23. Bulk of the evidence relates to the corrupt practices of religious appeal, obtaining the assistance of certain officers in the service of Government and of bribery. As already stated, the majority of persons, to whose activities the said evidence relates, belong to Yelburga Constituency. Bulk of the evidence is directed towards establishing the connection between the activities of certain persons and the respondents—successful candidates with a view to make out a case for invalidating their elections.

24. On the corrupt practice of religious appeal, the central figure is Channappagouda Master of Yelburga. The case, so far as the other corrupt practice of securing the assistance of officers in the service of Government is concerned, is generally that they canvassed for votes. Both Channappagouda Master and those officers are sought to be connected with the respondents largely by evidence of several propaganda meetings in which they are said to have participated. Bulk of evidence relates to these meetings and that evidence is common to the case of both the corrupt practices. In addition, C.H. Patil is sought to be connected with Channappagouda Master by connecting him directly with the printing and publication of Padyavali. A similar attempt to connect him with Pundangouda is through the evidence relating to the case of bribery. So far as Sanganna himself is concerned, the connection between him and the happenings or events in the Yelburga Constituency is sought to be established on the basis of the propaganda methods pursued by the Congress as a party in consequence whereof C.H. Patil conducted his propaganda not only for his benefit but for the benefit of Sanganna also.

25. Having regard to the above features of the petitioners' case and the evidence adduced by them, and the obvious manner in which their case is sought to be developed by such evidence, it appears to me that the most convenient way to discuss the evidence and the arguments would be to discuss the topics in the following order:—

(I) The status of certain persons for purposes of sub-section (7) of Section 123 of the Representation of the People Act,—covered by issue No. 6 in Election Petition 3 of 1967 and issue No. 6(a) and issues 1 and 2 in Election Petition 6 of 1967;

(II) The Yerhanchinahal-Mudhol Road contract of C. H. Patil and the case of bribery,—covered by issues 3 and 4 and 10 in Election Petition 6 of 1967;

- (III) Activities of Channappagouda Master covered by issues 4 and 5 in Election Petition 3 of 1967 and issues 8 and 9 in Election Petition 6 of 1967. This topic will cover bulk of the evidence relating to the Padyavali, propaganda meetings, propaganda pamphlets, theory of agency, etc.
- (IV) The corrupt practice of obtaining the assistance of the persons in the service of Government,—covered by issues 7 and 8 in Election Petition 3 of 1967 and issues 6(b), 6(c) and 7 in Election Petition 6 of 1967.
- (V) Disqualifications of Sanganna by reason of his holding offices said to be offices of profit and by reason of a contract alleged to be subsisting with the Central Government,—covered by issues 1 and 2 in Election petition 3 of 1967.

26. Taking up the first topic, we may at once exclude from consideration two persons named in issue No. 6, viz., Deshpande, Block Development Officer of Kushtagi and Devappa of Rampur said to be the police patil of Rampur. There is no evidence either about the status or activities of these two persons.

27. The question whether the rest of the persons or which of them would come within the purview of sub-section (7) of Section 123 has to be decided on an interpretation of the said provision.

28. The provisions of law relating to this topic has undergone two amendments,—one in 1956 and the other in 1958. In the Act as originally enacted in Section 123(8) which read as follows:

“(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation.—For the purposes of this clause—

- (a) a person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of this clause shall not apply;
- (b) a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, Zildar, Shanbagh, karnam, talati, talari, patil, village munsiff, village-headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole-time office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.”

29. In the course of the amendment of 1956, the topic got shifted to sub-section (7). The sub-section as re-enacted read as follows:—

“(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

- (a) * * * *
- (b) * * * *
- (c) * * * *
- (d) * * * *
- (e) * * * *
- (f) revenue officers including village accountants, such as, patwaris, lekh-pals, talatis, karnams and the like but excluding other village officers;
- (g) * * * *

”.

The rest of the sub-section is not material for our present purpose.

30. The said sub-section (7) was further amended in 1958. The sub-section so amended is the section which applies to the present cases. The relevant portion thereof reads as follows:—

“(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

(a) * * * *

(b) * * * *

(c) * * * *

(d) * * * *

(e) * * * *

(f) revenue officers other than village revenue officers known as lam-bardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions;

(g) * * * *

31. In interpreting this provision of law and in examining the question whether and if so, which of the persons named in issue 6 in Election Petition 3 of 1967 will come within the purview of the said sub-section, considerable assistance is available in two rulings of the Supreme Court reported in *K. C. DEO BHANJ V. RAGHUNATH MISRA*, A.I.R. 1919 S.C. 589, and *S. GURMEJ SINGH V. PRATAP SINGH*, A.I.R. 1960 S.C. 122. The first case pointed out the difference between the old sub-section (8) and new sub-section (7) of section 123 of the Representation of the People Act. The second case contains a detailed discussion of the said sub-section (7) as it stood after the 1956 amendment. There is also a brief reference to the sub-section as amended in 1958.

32. It will be seen that Parliament has from time to time changed its policy as to the question whether and if so, which of the village revenue officers should be brought within the scope of persons who should be prohibited from influencing elections. Throughout in the clause with which we are now concerned, the officers taken up for consideration are revenue officers of a village. In the case reported in A.I.R. 1960 S.C. 122, it is pointed out that the genus considered or dealt with in clause (f) is the large class of revenue officers and that the village officers included within that class as well as those excluded therefrom are both revenue officers. It is also pointed out that a revenue officer is one who is employed in the business of revenue and that the term is comprehensive enough to take in all such revenue officers in the chain of hierarchy in the revenue administration of a State. The sub-section as it stood after the amendment of 1956 took within the mischief of the law a species of village officers called the village accountants and gave by way of illustration several names by which such village accountant was known in different parts of the country. Patwari is one of them. The clear effect of the decision of the Supreme Court is that the patwari is a revenue officer. After a reference to Baden-Powell's book "Land Systems of British India", it is pointed out that throughout the different parts of India, a patwari or an officer of that category generally maintains certain village accounts relating to lands or population of the village.

33. In the sub-section as it now stands, the position is stated more by a description of the duties and remuneration than by an enumeration of names. Under the sub-section as it now stands, all village revenue officers, by whatever name called, will stand excluded from the operation of the clause if their duty is to collect land revenue and if they are remunerated by a share of or commission on the amount of land revenue collected by them, and if they do not discharge any police functions.

34. Now, among the persons named in issue 6 in Election Petition 3 of 1967, three persons are patwaris, Gururao Desai of Malekop, Sakharagouda of Bochenahalli, both of whom are pattadar patwaris, and Channappagouda of Mannapur who is the gumasta patwari of Anagondanakop.

35. The patwaris are revenue officers admits of no doubt for the reasons already explained. The question is whether they come within the excluded category of village revenue officers under clause (f) of Section 123(7). This has to be

examined from two points of view.—(1) from the nature of duties performed by them and (2) the manner in which they are remunerated therefor.

36. On the first question, there is no doubt that collection of land revenue is part of their duty. They also maintain certain village records. The argument on behalf of the petitioners addressed by Mr. B. S. Patil is that the bulk of their work is of a nature other than or different from the work of collecting the land revenue. He does not, of course, say that actual physical collection of land revenue is what is meant by the section. It is also correct to say that the wording of the section cannot be limited to actual physical collection of land revenue. But Mr. Patil's argument is that if we have regard for some of the names actually given in the clause, *viz.*, *lambardars*, *malguzars*, *pates* and *deshmukhs*, the idea suggested is that the duty or at any rate major portion of the duty of the officers should relate to the actual collection of land revenue. It appears to me that this would be too narrow an interpretation to place on the language employed in the section. The statute is dealing with a class of village officers well known for generations in India. It is also well known that the main or principal purposes of the Government served by the village officers are land revenue collection and law and order. The organization of the village has always centred round two categories of officers those performing or discharging revenue duties and those performing police duties. For the purpose of security or better exercise of local control, Kings and Governments of various generations had chosen to select men from local families of considerable influence which in the course of time tended to create the system of hereditary village offices. According to the history of each village, such offices might be limited to same family or two offices might be held by two different families.

37. From what is stated above, it appears to me that the ultimate policy adopted by Parliament through two amendments is to declare that the village officers who should not be permitted to influence elections should be those who discharge police functions. The language employed in the clause also takes into account the possibility of same officer discharging both the police functions and the revenue functions. If he discharges functions of both the categories, then he comes within the mischief of the section; if, however, he discharges revenue functions but does not discharge any police functions, he will be excluded from the prohibition of the section, whether or not he does any other type of work, so long as such other type of work does not in any manner come within the scope of the expression 'police functions'.

38. I am therefore of the opinion that a *patwari* is and can rightly be described as a village revenue officer whose duty is collecting land revenue.

39. The next question is whether the three *patwaris*, with whom we are not concerned, are remunerated in any manner other than or in addition to payment of a share of the land revenue collected.

40. On this point, a difference in the approach was made by Mr. Patil between *pattedar patwaris* and non-*pattedar patwaris*. He originally suggested that a *pattedar* who is a holder of hereditary office in Hyderabad area was generally a person to whom land was invariably assigned by way of remuneration or part payment of remuneration. After further investigation into the legal position, he stated that such may not be the invariable legal position but that it would be a question of fact in each case whether a *pattedar* village officer in Hyderabad area has or has not any land assigned by way of remuneration of his office. We have a rule in *Dastur-e-Delhi* to the effect that whichever village officer has land assigned to him by way of remuneration is not entitled to receive a share of land revenue or percentage of land revenue technically called *scale*. Hence, if it is shown that a particular officer receives a *scale*, we might infer that he does not have any land assigned to him.

41. In the case of Gururao Desai, we have *Potgi Taktas* produced or proved by R.W. 1 Ramachandra, *Tahsildar* of *Yelburga*. They are marked Exs. P-79 to P-86. These *Taktas* show that Gururao Desai receives a *scale*. He has a *gumsta patwari* in various villages in respect of which he is *pattedar*; and according to one of the circulars of Nizam's Government, the *gumsta* gets two-thirds and the *pattedar* retains one-third. There is therefore sufficient basis in the case of Gururao Desai for a firm inference that he has no land assigned to him.

42. In the case of Sekharagolida, we have no such clear evidence; but because of the probability that such officers are generally remunerated by a *scale* and also because the burden of proving whether he is a person in the service of Government within the meaning of Section 123(7) of the Representation of the People Act is on the petitioners, it has to be held that Sekharagouda is not shown to be such an officer.

43. Regarding Channappagouda of Mannapur, he is admittedly a gumasta. There is not therefore a case for even a suggestion that some land might have been assigned to him. Gumasta is undoubtedly a substitute selected by the pattedar for performing his functions.

44. For these reasons, it has to be held that the three patwaris namely, Gururao Desai of Malekop, Sekharagouda of Mannapur, are revenue officers excluded from the operation of Section 123(7) of the Representation of the People Act.

45. Of the remaining persons, Pundangouda is admittedly a police patel. C. H. Patil has deposed that from about the year 1952-53, after the death of Venkangouda, Pundangouda has been and continues to be the Police Patel of Halkerl village in Rom Taluk, Dharwar District.

46. There remain two persons for consideration, Kishna Rao vakil of Yelburga and C. H. Patil himself.

47. Kishanrao Vakil is said to be the pattedar Police Patel of Kudrikotgi in Yelburga. A document purporting to be a copy of a certificate said to have been issued by the Tahsildar of Yelburga to Shirur Veerabhadrappa, was produced and has been marked as Ex. P. 75. That document is however a statement of fact either within the knowledge of certifying Tahsildar or gathered by him from official records available to him. The certifying Tahsildar himself being a living person and as he has not given evidence, I do not think that the certificate, by itself, can be regarded as having any evidentiary value.

48. There is however acceptable oral evidence going to prove that Krishnrao Vakil was at one time and probably still is in the eye of the law a Pattedar Police Patel. The first witness for the respondent, the present Tahsildar of Yelburga himself deposes that Krishnrao Vakil is such a Pattedar Police Patel. Kishanrao's son Venkatrao examined as R.W. No. 2 also deposes that hereditary Police Patilki of Kudrikotgi had been with their family for some generations. According to him, it was also a subject of partition between Krishanrao and his brothers.

49. We can, therefore, proceed safely on the footing that the family of Krishanrao did have the hereditary Police Patelki right in Kudrikotgi and that, if the evidence of Venkatrao can be accepted and there is no reason why I should not do so, the said Police Patilki came to the share of Krishanrao himself at a partition between him and his brothers Muraharrao and Jagannathrao.

50. The respondents, however, have an alternative theory in regard to this Kishanrao's rights in relation to Kudrikotgi village. They say that he held Maqta or royal grant or Inam in respect of Kudrikotgi and that according to the law governing village administration in Hyderabad State, a Maqtedar of the type of Kishanrao had the right of appointing village officers to the village in respect of which he was Maqtedar. The further case of the respondents is that in exercise of the said power as Maqtedar, Kishanrao had appointed his son Venkatrao R.W. No. 2 as Police Patel of Kudrikotgi as long ago as in 1948.

51. Apparently with a view to establish this part of their case, respondents got summoned through court the production by Tahsildar of Yelburga of documents evidencing appointment of Venkatrao as Police Patel. In the first instance, the Tahsildar of Yelburga sent up to court a paper purporting to be a certified copy of a Sanad of appointment under which Kishanrao had appointed his son Venkatrao as Police Patel of Kudrikotgi. That is Ex. R-16. Subsequently and in answer to another summons issued to him, the Tahsildar appeared as a witness in this court and produced a book called a register for noting of Sanads from the records of the Tahsil office. That book is Ex. R. 21. The Tahsildar examined as R.W. 1 deposed that Ex. R. 16 is true copy of a page in the book Ex. R. 21 separately marked as Ex. R. 21(a). Ex. R. 21(a) itself discloses that what was written thereon was itself a copy of some original, because at the foot of it, there is a certification in Urdu "Nakal Durast Hai".

52. From what is stated above, it is clear that Ex. R-16 is a copy of a copy and should therefore be kept out of the record. The question whether Ex. R. 21(a) can be accepted by way of secondary evidence depends upon whether the party producing it has satisfactorily established the loss of the original. Regarding the original, the evidence of Venkatrao, R.W. No. 2 is that there was only one original Sanad which was handed over to him by his father and which he produced before the Tahsil office to be copied in Ex. R. 21. His further evidence is that in the course of heavy rains about 4-5 years ago, a portion of his residential house wherein his original Sanad was kept collapsed and that the original was therefore lost. The Tahsildar of Yelburga, R.W. No. 1, speaking on the strength of his experience about

the official practice stated that in cases of this type, there would ordinarily be two originals; One given to the appointee himself and the other sent to the office of the Talukdar, the Tahsil office merely maintaining a copy in a book of the type of Ex. R. 21. Now, during the days of Nizam's Government, Yelburga and Koppal were within the jurisdiction of one officer called Talukdar with headquarters at Koppal. Hence, in the light of evidence of R.W. No. 1, one of the originals of the Sanad of appointment may reasonably be expected to be among the papers of the said Talukdar. Upon the assumption that the papers of the said office were made over to the custody of an officer now called Assistant Commissioner, Koppal, R.W. No. 1 says that he wrote to him for papers included in a file bearing No. 10 of 1956 Faali which number he obtained from Ex. R. 21(a). R.W. No. 1 deposes that in reply, the Assistant Commissioner told him that the file was not traceable.

53. The question is whether the above correspondence between the Tahsildar and the Assistant Commissioner, Koppal, which the Tahsildar says he felt obliged to enter into in view of the summons received from this court and the deposition of Venkatrao to the effect that the original in his possession was washed off in the heavy rains, furnish sufficient ground to the respondent to claim the benefit of producing secondary evidence of the original.

54. I do not think that I need go into this matter at any length or even examine the several arguments as to the legal effect of the language employed in the Sanad because the matter can be more satisfactorily disposed of on other facts appearing from the evidence.

55. Now the case of the respondent is that the appointment of Venkatrao as Police Patel was made by Kishanrao in exercise of his powers as Maqtedar. Now, the relevant provisions of Dastur-e-Dehi indicate that such powers are ordinarily attached to Maqtas following upon a Kowl granted for the purpose of converting Becharak villages into fertile and populous villages. In olden days, the Nizam's Government used to grant Kowls or long term leases or leases of specified terms to persons who undertook to bring under cultivation and population forest areas or Becharak areas, with the stipulation that they should within a particular period bring certain amount of and under cultivation and see to it that at least 40 houses are constructed. If, at the end of such a period of the Kowl, the Kowladar succeeded in satisfying these conditions, the Nizam's Government granted the village by way of Maqta, or royal grant (Maqta means a portion cut out of the royal estate and granted to the subject of the Government). Upto the time the village has about 40 houses, the responsibility of maintaining law and order was mainly that of the Maqtedar and even the Taluqdar had no right to interfere. When a Maqta is actually granted, the Nizam's government either confer upon the Maqtedar himself the right of Patelki (right of village officer) or give him the power to appoint village officers to the village. Maqta being a grant, it would clearly be in the nature of a heritable estate.

56. The evidence of Venkatrao, R.W. No. 2 is to the effect that in the partition between his father Kishanrao and his brothers, the hereditary Mulki and Police Patilki of the village was the subject of partition and that Mulki Patilki was allotted to the branch of Muraharrao and the Police Patilki to the branch of Kishanrao. The further evidence of Venkatrao is that the Maqta in the purported exercise of the rights attaching to which he was appointed as Police Patel by his father, as a Maqta granted for the first time to Muraharrao, the elder brother of Kishanrao. Venkatrao states that Muraharrao died about 30 years ago and that because his son at the time was an infant of 2 years, the Government appointed his father as Maqtedar.

57. If as Venkatrao states the Pattedari of the Police Patel was the subject of partition between Kishanrao and his brothers, there can be no doubt that the Police Patelki was with the family during the life time of Kishanrao's father, because it is only in cases where the property comes down from the father that the sons can claim the right of partition. The Maqta, according to Venkatrao, was granted for the first time to Muraharrao. If so, it should have in the ordinary course descended to his son even though he was an infant. How and under what circumstances, the infant could be deprived of that right and how and under what provision of law Kishanrao could be appointed a Maqtedar are questions to which no answers are possible on the evidence. Assuming but without deciding that at some point of time Kishanrao became Maqtedar of Kudrikotgi, it is obvious that the Police Patilki could not possibly be attached to it, because the said Patelki was already in the family.

58. On the evidence now before me, it is not possible to agree with the contention of the respondents that the appointment of Venkatrao as Police Patel by Kishanrao can be clearly related to any rights as Maqtedar.

59. If the Police Patilki was hereditary, it would descend from generation to generation and being a public office, it cannot be transferred during the life time of an officer by him to another person. The only possibility is that the law governing village administration permits the Pattedar with the consent of the Sarkar to appoint an agent or a Gumasta to perform his duties.

60. In this view, it appears to me to be safer to proceed on the basis that although there was or there might have been some sort of Maqta granted to Muraharrao, which under circumstances not quite clearly made out, came to the enjoyment of Kishanrao, the Police Patilki right was something independent of it.

61. In this view, it is difficult to resist the legal interpretation pressed on behalf of the petitioners that even though the actual service is rendered by Venkatrao as Police Patel, he must be regarded as occupying the position of a Gumasta and that the hereditary Patilki vests or continues to vest in Kishanrao.

62. That Venkatrao has been actually performing and is still performing the duties of Police Patel can be taken as proved by the evidence. Though P.W. 13 Ajjiiah Swami denied that he was doing such duties, there is clear evidence of the Tahsildar, R.W. No. 1 that Venkatrao is actually performing the duties. There is also the admission by another witness for the petitioner, namely, Tippanna, P.W. 5 that Venkatrao is performing the duties of Police Patel of Kudrikotgi.

63. On this basis, the further argument of Mr. B. S. Patil is that even though Pattedar may not be performing or actually discharging duties of the office, he must still be held to be holder of the office in view of the decisions reported at 20 and 480 of 8 Election Law Reports (ELAYA PILLAI V. K. PARTHASARTHY AND OTHERS, & JADUMANI MANGARAJ V. DINABANDHU SAHU AND OTHERS). They show that a village officer continues to be an officer even though he gets the duties of the office performed through a Gumastha and that a Government Officer continues to be a Government Officer even though he is on leave. There can be no doubt about the soundness of the principle and the same will have to be applied to the situation in this case.

64. Even so, the argument of the respondents' learned counsel is that the matter is not at an end. According to him, all hereditary offices have got abolished under Mysore Village Offices Abolition Act, 1961, which came into force on the first of February 1963. The operative section of that Act to the extent now relevant is section 4(1) and (2), according to which, notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a Court, or in an existing law relating to village offices, with effect from the coming into force of the Act, all village offices stand abolished and all incidents appertaining to such office stand extinguished. A village office is defined in clause (n) of Section 2 of the Act as meaning every village office to which emoluments have been attached and which was held hereditarily before the commencement of the Constitution.

65. The hereditary village office held by Kishanrao undoubtedly comes within the definition and by virtue of section 4 it stood abolished and all its incidents stood extinguished. The evidence shows that the payment was by way of share in the revenue of Kudrikotgi. There is no watan land or Inam land attached to that office. A question was put to Venkatrao to ascertain whether there was such land and his categorical reply was that there was no Watan land attached to the Police Patilki and that after the coming into force of the Hyderabad Abolition of Jagirs Regulation 1949, an Order was issued to him by the Tahsildar directing him to continue as Police Patel consequent on the abolition of the Maqta.

66. Venkatrao has not produced the said order by the Tahsildar appointing him as Police Patel or directing him to continue as Police Patel. But we are not concerned with the title in which or the order on the strength of which Venkatrao works as Police Patel. That he is working and that his father Kishanrao is not actually working as Police Patel is proved by the evidence.

67. Hence, what remained with Kishanrao was merely a hereditary right of working as Police Patel. If the answers given by his son Venkatrao can be accepted, the entire sum of Rs. 66-4-0 paid to him or received by him as remuneration for the office was appropriated by himself and no part of it was given

to Kishanrao. Hence Kishanrao can rightly be described as a person holding the bare right of performing the duties of office with neither any property attached to the office by way of remuneration nor the right to receive any cash remuneration before actually taking up the duties.

68. The only incident attached to the office which therefore can be said to have vested in or to continue to vest in Kishanrao was the bare right of actually taking up the office.

69. The result of section 4 of the Mysore Village Offices Abolition Act is to abolish first the hereditary village office held by Kishanrao and secondly to extinguish the only incidents still vesting in the hands of Kishanrao of actually taking up the duties of the office.

70. I, hold, therefore, that on the date of relevant to this election Kishanrao did not hold any village office.

71. There is another argument of Mr. B. S. Patil in relation to operation of the Mysore Village Offices Abolition Act which has a special reference to Watan property and holding of Watan property. That I shall consider in connection with the case of alleged office held by C. H. Patil.

72. Although much oral evidence has been adduced about the agnatic relationship of C. H. Patil and several extracts of village records have also been produced, the controversy on this point appears to me to fall within a narrow compass.

73. That the family of C. H. Patil did have the hereditary Patilki both Mulki and Police of Halkeri village is not denied by anybody. That there was some watan property assigned to the family or the Watandar from whom the family is descended is also not denied. That the land S. Nos. 21 and 195 of Halkeri village were among the Watan property is also a matter of admission. The evidence of C. H. Patil is to the effect that by virtue of a partition which took place between his grandfather Venkangouda and the widow of Pundangouda's grand-father, Bassangouda, the whole of S. No. 21 and a portion of S. No. 195 was allotted to the share of his grandfather Venkangouda. Ever since the death of his father, the said items are in his possession and continue to be in his possession even now.

74. He has further deposed that by virtue of some earlier arrangement in the family, the Police Patelki is exercised by the branch descended from one Bharamangouda to which branch Pundangouda belongs and that the Mulki Patelki is enjoyed by the branch to which Bassangouda belongs. He adds that his is the youngest branch and it has given up the right of exercising these offices. He has further deposed that during the suspension of Venkangouda the father of Pundangouda from the office, he C. H. Patil himself had been appointed by the Assistant Commissioner of Gadag to officiate as Police Patel. This was some time between 1950-52. Thereafter, he says that Venkangouda was reinstated in the office and after the death of Venkangouda some time in 1953, Pundangouda was appointed to the office and that he continues to hold the office.

75. Whatever may be the legal arguments addressed on behalf of the petitioner, one thing that is admitted by everyone is that on the date relevant to this election, that is 21st January 1967, C. H. Patil was not actually working as Police Patel of Halkeri village. On that date, the said office was held and was being exercised by Pundangouda.

76. The argument of Mr. Venugopalchari on behalf of C. H. Patil is that as a matter of fact his client is not exercising that office and that whatever might by the incidents attached, to S. Nos. 21 and 195, as original Watan property, those incidents have got extinguished by virtue of Mysore Village Offices Abolition Act 1961 and that therefore his client neither holds the office nor any property assigned as remuneration of that office.

77. The contention pressed on behalf of the petitioner by Mr. B. S. Patil, learned counsel, on the other hand is that the Watan character of the items of property admittedly in possession of C. H. Patil has continued unaffected by the Village Offices Abolition Act and has in effect been kept alive by virtue of some of the provisions thereof and of the rules made thereunder and that so long as C. H. Patil holds in his possession Watan property, he is liable to render service as Mulki Patel or Police Patel as the case may be, whenever called upon by the grant of the Government and that so long as such liability continues, he

must be held to hold that office and also to hold the said property as profits of that office.

78. Before examining the effect of the Mysore Village Offices Abolition Act, I may briefly refer to the provisions of the Bombay Hereditary Village Offices Act called "Watan Act" to test the correctness of the proposition that in the circumstances stated, C. H. Patil is a person who may be called upon to render service either as Police Patel or Mulki Patel.

79. Section 4 of the Watan Act contains definitions. Watan property is defined as moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duties appertaining to an hereditary office. The Watan property and the hereditary office and the rights and incidents attaching to them together constitute what is called a "Watan". A Watandar is a person having a hereditary interest in the Watan.

80. Watan Property is subject to certain conditions in regard to its enjoyment etc. The alienation etc. of Watan property outside the family is prohibited but Watan property becomes ancestral property in the hands of the successors of a Watandar and in due course the joint family property liable to partition.

81. Section 24 of the Act states that the duties appertaining to any hereditary office shall be performed by the representative Watandars or by deputies or substitutes selected as provided under the procedure prescribed in the statute and by no other person. Section 25 enjoins upon the Collector the duty of determining, in the manner prescribed, the custom of a Watan as to the service and what person shall be recognised as representative Watandars for the purpose of the Watan and to register their names. The representative Watandar is ordinarily the head of the family. Family is defined under Section 4 as inclusive of the branches of the family descended from the original Watandar. When there are several families, one point that the Collector has to determine is whether the office is to be exercised by only one family or several families. In the former case, he is required to register only the names of the head of such family and no other person as representative Watandar. In cases where there are several branches and it is proved that by some custom or understanding between the several branches, the office is to be exercised in turn by the several families in successive periods, the Collector is required to recognise the heads of such families as representative Watandars and no other person and also to decide the order in which the representative Watandars shall officiate

82. From the above summary of the relevant provisions of the Watan Act, it appears to me that it is a clear position in law that whoever may be the member of the family in actual possession of the whole or any portion of the original Watan property, the only persons who can claim to function as officer or called upon to function as officer are the persons who answer the description of representative Watandars.

83. I have no evidence before me to show that C. H. Patil is or has been, at any time, appointed as representative Watandar. Regarding his appointment during the suspension from service of Venkangouda, the questions that were put to him were, whether before appointing him as such, the Assistant Commissioner of Gadag had or had not made an enquiry about his relationship and also whether at that time he was not next in the order of relation with Honnappagouda excluding, of course, the suspended officer, Venkangouda.

84. That he was such relation was admitted by C. H. Patil but the fact that the Assistant Commissioner may have taken that circumstance into consideration cannot, in my opinion, be regarded as conclusive on the question whether C. H. Patil was or has at any time been registered as representative Watandar or that the title in which he worked as Police Patil during the suspension of Venkangouda was the title of a representative Watandar.

85. Coming now to the Mysore Village Offices Abolition Act, 1961, it is necessary to set out the entire section 4 to discuss the arguments addressed by Mr. B. S. Patil. That section reads as follows:—

"Notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a Court, or in an existing law relating to village offices, with effect on and from the appointed date,—

(1) all village offices shall be and are hereby abolished;

- (2) all incidents (including the right to hold office and the emoluments attached thereto, the right to levy customary fees or perquisites in money or in kind and the liability to render service) appertaining to the said village offices shall be and are hereby extinguished;
- (3) subject to the provisions of section 5, section 6 and section 7 all land granted or continued in respect of or annexed to a village office by the State shall be and is hereby resumed, and shall be subject to the payment of land revenue under the provisions of the Code and the rules and orders made thereunder as if it were an unalienated land or ryotwari land."

As it stands, there can be no doubt that it operates to put an end to hereditary offices, all incidents thereof as well as the character of land as land assigned as remuneration for such office. The first sub-section puts an end to the office. Second sub-section extinguishes all its incidents and the third resumes all lands assigned as remuneration by the Government and converts it into ordinary ryotwari land liable to full assessment.

86. The resumption under sub-section 3 is expressly stated to be subject to the provisions of sections 5, 6 and 7. The said sections 5, 6 and 7 deal with the topic of regrant of the land and the acquisition by the erstwhile village officer of the full title thereto on payment of what is called occupancy price which is a multiple of the full assessment. Section 9 of the Act gives certain relief to the erstwhile officer consequent upon the abolition of the office. That relief is by way of payment of compensation calculated in the manner provided by the statute. The other sections of the Act confer certain powers of adjudication and enquiry upon certain officers and empowers the State Government to make the necessary rules.

87. Now the argument of Mr. Patil is that although section 4 purports to abolish offices, incidents and also the Watan character of land if any assigned as remuneration for such office, other sections really keep all these consequences in abeyance. His argument is that although section 4 says that the office is abolished and the land is immediately resumed by the Government, in actual event, the officers have not been dispossessed. In any event so far as C. H. Patil is concerned, it may be taken as admitted that he is still in possession of the land. Though he has stated that occupancy price payable by him for obtaining the land resumed by the government by way of regrant has been paid, his evidence is criticised as either unacceptable or ill-informed as to details. It is argued that he has not done all that he is required by the rules to do before obtaining full title to the land. On this footing, it is argued, until that stage of completion is reached, the land in possession of C. H. Patil continues to retain its original Watan character.

88. The answer on behalf of C. H. Patil is that provisions of section 4 by the very force of the language come into operation immediately on the commencement of the statute, that is, 1st February 1963, and that subsequent provisions are merely in the nature of provisions made to ascertain and adjust rights arising consequential upon the abolition of the office and the Watan character of the property.

89. Mr. Patil further advanced several arguments on the basis of the ruling of the Supreme Court reported in A.I.R. 1964 Supreme Court P. 685 (*State of Orissa Vs. Ramchandra*), particularly the following passage occurring at page 687 of the report.

"The distinction between grants of land burdened with service, and grants of land made by way of remuneration attaching to the office created by them is well known. In the first category of cases, the grant may not be resumable, while in the second category of cases, with the abolition of the office the land can be resumed."

90. His argument is that the Watan land in possession of C. H. Patil is land burdened with service and that therefore it was not resumable and that therefore what could be done by the Government is only acquire it compulsorily by paying certain compensation and that such acquisition and the consequential extinction of the Watan character is or could be complete only after all provisions of law pertaining to the payment of compensation are finalised.

91. I do not think that the principle is at all available in this case. The case decided by the Supreme Court in *State of Orissa Vs. Ramchandra*, A.I.R. 1964 Supreme Court, P. 685, is a case which deals with the rights of Zamindars acquired under the permanent settlement pursuant to the provisions of the Madras Regulation XXV of 1802. The question was whether pursuant to the said settlement, the Zamindars had or had not acquired a right to the land in a manner making it possible for them to retain possession thereof in spite of or notwithstanding the passing of the Estate Abolition Act by the Madras Legislature. The questions which arose in relation to the said Regulation and Act in force in Madras, do not arise in this case.

92. It is beyond dispute that the both the village offices of Halkeri and the land in possession of C. H. Patil were governed by the Bombay Watan Act. It is equally indisputable that by virtue of sections 15 and 22 of the said Act, not only were the services subject to commutation but the land itself was liable to be resumed in exercise of the original sovereign power of the State which had granted the land. Any discussion on principle and the legal effect of these two sections is rendered unnecessary by reason of the declaration of law made by the Supreme Court in the case reported in A.I.R. 1964 Supreme Court, P. 326 (*Collector of South Satara Vs. Laxman Mahadev Deshpande*), dealing with the provisions of the Bombay Paragana and Kulkarni Watan (Abolition) Act, which is, in many respects, *pari materia* with the Mysore Village Offices Abolition Act, 1961. The Watan abolished by the said Act were Watan in respect of which a commutation had been given effect to under what was called "Gordon Settlement." The operative section 3 thereof is *pari materia* with section 4 of the Mysore Village Offices Abolition Act, 1961. It also abolished in terms Paragana and Kulkarni Watan, extinguished all rights to hold those offices and liabilities to render service in respect of them and subject to the conditions as to regrant upon payment of occupancy price, resumed all lands granted by way of remuneration, in the same manner as the Mysore Act has done. After pointing out that the statute did no more than resume the land which could have been done in exercise of executive power under section 22 of the Watan Act, the Supreme Court states as follows:—

"Section 3 in terms provides for abolition of the Watan, extinction of the office and modification of the right in which the land is held. The abolition, extinction and modification arises by the operation of S. 3 of the Act, and not from the exercise of the executive power of confiscation or resumption, by the State. Undoubtedly the power of resumption of a Watan may be exercised under S. 22 of the Watan Act and such resumption may destroy the right of the holder both to the office and the watan land, and in the absence of any provision in that behalf no right to compensation may arise. But where the abolition of the watan is not by executive action, but by the legislative decree, its consequences must be sought in the statute which effectuates that abolition."

Thereafter, their Lordships point out that not only the payment of compensation in cash for or in respect of the abolition of the rights of the office but also the provisions for obtaining regrant by payment of occupancy price, are both in the nature of compensation granted by the Statute by way of grace in respect of the abolition of the office, extinction of the rights and the destruction of the original watan character of the land. It is clear therefore that even the provisions in regard to the resumption of the land and the procedure prescribed for payment of the occupancy price, the concession by way of instalments, extension of time, etc., are all provisions dealing with consequences of abolition. They cannot be read as to any extent modifying the clear effect of the operative section which abolished the offices and modified the rights in respect of the land.

93. I hold, therefore, that by operation of the Mysore Village Offices Abolition Act, 1961, whatever be the right C. H. Patil might have had as a member of the family to either Mulki-Patilki or the Police Patilki of Halkeri village and whatever may be the incidents or the nature of the title under which S. Nos. 21 and 195/2 of Halkeri came into his possession, all those rights and liabilities in respect of the office stood abolished on the coming into force of the Mysore Village Offices Abolition Act, 1961 and the land ceased to be Watan land on the same date.

94. He is therefore neither a person in the service of the Government within the meaning of Section 123(7) of the Representation of the People Act, nor does

he hold any office of profit under the Government for the purposes of Article 191 of the Constitution

95. My findings on Issues so far considered, therefore, are the following:

Issue No. 6 in E.P. No. 3 of 1967.—There is no evidence about the status or the activities of Deshpande—Block Development Officer, Kustagi, or Devappa said to be the police patel of Rampur Gururayagouda alias Gururaogouda Desai of Malekop, Shekaragouda of Bochenahalli and Channappagouda of Mannapur, are revenue officers who are excluded from the operation of Sub-section 7 of Section 123 of the R.P. Act. C. H. Patil and Kishenrao Vakil were not, on the date relevant to this Election, officers in the service of the State Government within the meaning of section 123(7). Pundangouda of Halkeri was on the relevant date Police Patel of Halkeri village in Ron taluka.

Issue No. 6(a) in E.P. 6 of 1967.—Gururaogouda of Malekop and Channappagouda of Mannapur are excluded from the operation of Section 123(7). Kishenrao Vakil was not an officer of the Government on the relevant date. Pundangouda was the police patel of Halkeri village in Ron taluka.

Issue No. 1 in E.P. No 6 of 1967.—The respondent C. H. Patil was not watandar police patel or mulki patel of Halkeri village on the date relevant to the Election.

Issue No. 2 in E.P. No. 6 of 1967.—In view of the finding on Issue No. 1, the respondent was not disqualified under Article 191 of the Constitution for being chosen as a member of the Mysore Legislative Assembly.

96 The next topic that I will take up for consideration is C. H. Patil's contract with the State Government in respect of Yerehanchinal-Mudhol road and the corrupt practice of bribery.

97 Regarding the contract, there is no documentary evidence of any value. The respondent C. H. Patil produced what he calls completion certificates issued to him by the Executive Engineers of Raichur Division and Koppal Division, Exhibits R 34 and R 36. They are not of any evidentiary value for the same reason as Ex. P.75 is not of any such value.

98. The matter, therefore, has to be decided only on oral evidence available. C. H. Patil in as R.W. 8 deposes to the following effect in paragraphs 21, 22, 23 and 24 of his deposition.

99 The Yerehanchinal-Mudhol road work of total length of 11 miles was taken up by the Government in the year 1960 as a measure of famine relief. Out of the total length, he took up the contract in respect of only the first five miles of the road from Yerehanchinal. He completed the work, according to him, within three months of taking it up in 1960 itself. The work was not of any elaborate character, but consisted merely in forming the road and surfacing it with earth work.

100. As against this evidence, there is no evidence on behalf of the petitioners to prove that the said contract did subsist as partly performed even during January 1967. The evidence of both Ajjaiah P.W. 13 as well as P.W. 24 Sirur Veerabhadrappa consists of mere assertions not based on any personal knowledge. To series of questions put to him in cross-examination, Sirur Veerabhadrappa pleaded ignorance of every relevant fact. He did not know whether the work was divided between three persons and C. H. Patil took up work only in respect of the first five miles; he did not know whether the work was completed in November 1960 as stated by Patil; and he admitted that he had not looked into or inspected any papers or Government records to ascertain whether and if so the contract had been performed or left unperformed at any particular stage.

101. In view of this evidence and because the burden is undoubtedly upon the petitioner, I do not see any reason why I should not accept the statement on oath made by C. H. Patil.

102. My findings therefore, on Issues Nos. 3 and 4 is that there was not subsisting, on the date relevant to the Election, any contract between the State Government of Mysore and C. H. Patil, and that the petitioner has failed to prove that C. H. Patil was disqualified for being chosen as a member of the Mysore Legislative Assembly under Section 9-A of the R.P. Act.

103 The issue of bribery, namely No. 10 in E.P. No. 6 of 1967, asks whether the petitioner proves the circumstances set out in paragraph III-D of the petition.

and whether in those circumstances, if established, the corrupt practice of bribery is made out

104. The reason why I framed the Issue in that way was that the case of bribery appeared to be based on or to flow from the sequence of events set out in that paragraph, I, therefore, preface my discussion of the evidence adduced by the petitioner on this Issue by quoting the entire paragraph setting out those circumstances.

"On 13th February 1967, i.e., hardly a week before the polling day, Shri Basangouda, Mulki Patel and Pundangouda, Police Patel, both of Holkeri, wrote a letter to Kalkayya of Tondihal, a village in the Yelburga Constituency. Both these persons who wrote the letter are cousins of respondent No. 1. Both of them have canvassed votes for respondent No. 1 in the company of respondent No. 1 and his Election Agent, Shreepalgouda Devindregouda of Mangalore, a village in the Yelburga Constituency. They have offered to pay the contentious charges to the labourers from Tondihal and Bhandihal in connection with the construction of the Yerehanchinal-Mudhol Road. In the said letter they have requested for a collective decision of the leaders of the village so that their demand would be met. The burden of the letter is to get votes for respondent No. 1 by offering money for votes on the specious plea and in the garb of offering to pay dues, and by getting the leaders of the villages, to accept the bait. The letter contains promises and offers that the payment would be liberal, i.e., more than what was just or due or compensatory. This offer of bribe was spurned by the people of Tondihal and Bhandihal, who felt insulted by this offer to buy votes."

Earlier in the paragraph while formulating the case of bribery in the light of the language of the Section, the petition states that the offer was made with the consent of respondent C. H. Patil.

105. The letter referred to was first shown to P.W. 13 Ajjalah. Because he could not speak to it on personal knowledge in view of the circumstances which I shall presently summarise, it was marked only for identification at that stage. Later, one Neelappa of Thondihal was examined as P.W. 22. Because he spoke to having actually seen Basangouda writing that letter and also to have been told the contents and purport of that letter, the said letter was then recorded by me as having been proved through P.W. 22.

106. The position briefly, according to the case of the petitioner, as presented to me either through the evidence or arguments, is this;—In respect of Yerehanchinal-Mudhol road work, C. H. Patil had not paid or made full payment of wages to the road workers belonging to the villages of Thondihal and Bhandihal. There were, therefore, either some disputes or complaints by the said villagers about the alleged non-payment or omission to make full payment. By reason of the same or as a result of the same, it is said that an atmosphere or feeling prejudicial to the election prospects of C. H. Patil existed or was brought about in the villages of Thondihal and Bhandihal. His relations Pundangouda and Basangouda, thought that there was something peculiar or surprising about these two villages alone exhibiting a tendency contrary to the general favourable response of voters in other villages. Thinking on those lines, Basangouda is said to have made enquiries with P.W. 22 Neelappa, when he was passing through Halkeri enroute to his sister's house in Gajendragad. On being told by Neelappa that the reason for lukewarm support or opposition to C. H. Patil in Thondihal and Bhandihal was the above state of affairs regarding the wages, he Basangouda, thought of an effective solution for the difficulty by approaching Kalkaijah the sarpanch of the village and trying through him to pacify the workers and to eliminate, if possible, the adverse feelings of voters in Thondihal and Bhandihal. It is in pursuance of such a line of action that Basangouda and Pundangouda are said to have come to the village and actually made a certain offer in the circumstances amounting to corrupt practice of bribery within the meaning of Sub-section 1 of Section 123.

107. It is as a prelude to the proposed visit to Thondihal that the letter Ex. P. 44 is said to have been written. The letter, according to the evidence, was sent to Kalkaijah, the sarpanch of the village. It is in the evidence of P.W. 13 Ajjalah, who is the Secretary of the L. S. S., that after the defeat of his party candidate and at the instance of the important members of the party, he toured the Yelburga

Constituency to ascertain, if possible, the reasons for the defeat of his party at the Elections. In the course of the said perambulation, it is his further evidence, he contacted Kalkalah and made specific enquiries with him why the voters of Thondihal and Bhandihal who were expected to extend considerable support to the L. S. S. did not do so. It is in the course of such enquiry that Kalkalah is said to have delivered Ex. P. 44 to Ajjalah. It was in his custody for about 15 days thereafter, at the end of which he is said to have handed over the letter to the petitioner Sirur Veerabhadrapa. So far as the actual events themselves are concerned, the evidence of Ajjalah is only a narration of what Kalkalah is said to have told him.

108. The only direct evidence of all details of the case of bribery is that of P. W. 22 Neelappa. He is one of the members of the Thondihal Panchayat. He has a sister married to a person in Gajendragad. For the purpose of making some arrangements for a ceremony called 'Udithumbuvadu' in connection with the first pregnancy of his sister, he had according to him, occasion to go to Gajendragad about a week before the polling. He says that he normally takes the route via Halkeri. Halkeri is four miles from Thondihal. He walks up the distance and then proceeds to another place called Nidagundi where he takes bus for Gajendragad. There is in Halkeri a mutt called Annadaswamu Mutt. According to his evidence, it is his habit to visit the Mutt whenever he passes through Halkeri and do obeisance to the Gaddige of the Swami. On this occasion, also, he had gone to the Mutt and on his way out, he happened to meet Basangouda. Basangouda made enquiries with him particularly about the alleged apparent lack of support or opposition to C. H. Patil in the villages of Thondihal and Bhandihal. Neelappa says that in reply he told him about the arrears or alleged arrears of wages, the feelings generated thereby, pointing out the same as the possible cause for lack of support to C. H. Patil in the villages. Immediately Basangouda is said to have sent for letter-paper, wrote out a letter addressed to Kalkalah saying that he is a sambandhi of Bhadrakah of Halkeri, and arranged to send the same through a boy. Neelappa's evidence is that the entire letter was written in his presence by Basangouda sitting on a katta near the Mutt. It is his further evidence that after writing the letter, Basangouda actually read out the contents to him.

109. Neelappa, however, did not wait to see the despatch of the letter, but proceeded to Nidagundi on his way to his sister's house. He returned to Thondihal the next day and reached his place about sunset time. Sometime thereafter, he was sent for by Kalkalah, according to his evidence. When he went there, Kalkalah told him that he had received a letter from Basangouda, and Neelappa told him that he already knew about it.

110. He further deposes that on the following day at about 11 O'clock in the morning, Pundangouda, Basangouda and 10 or 15 others of Halkeri came to Thondihal. They came straight to the office of the Panchayat where both Kalkalah and P.W. 22 Neelappa happened to be sitting. What happened thereafter, may be stated in the witness's own words.

"The next day at about 10 or 11 A.M. Pundangouda, Basangouda and others in all about 15 or 20 people came to our village. All these people came to the office of the Panchayat. I was there sitting with Kalkalah. Kalkalah then sent for the elders of the village. Four or five people came. There was some talk in the course of which, Pundangouda and Basangouda asked us why our village was against Channabasannagouda whereas other places were extending support to him. We, that is, the people of our village said that C. H. Patil has kept in arrears for five or six years the wages due to road workers of our village and it had engendered a feeling against him and that if the wages are paid, people might vote for him. Pundangouda and Basangouda said that if the whole village voted for Channabasannagouda, they would arrange to have the arrears of wages paid. We said that wages should be paid first. They said we should at least give an undertaking that the whole village would vote for Channabasannagouda. We replied that the few of us could not give an undertaking on behalf of the whole village. Ultimately, no understanding could be arrived at and we dispersed. The people from Halkeri went to the house of Police Patel Andanigouda."

111. P. W. 22 Neelappa was also present when after the Election, Ajjalah had come to Thondihal in the course of his enquiries. He speaks to Kalkalah handing over the letter Ex. P. 44 to Ajjalah.

112. Kalkaiah is not a witness. What effect his non-examination may have on the evidence, I shall discuss later. But, his version of the situation as related to me by Ajjaiah as P. W. 13 may now be set out in the words of Ajjaiah himself:—

"I had occasion to go to Thondihal about eight days after. I had gone there at the instance of my party executive to enquire into the circumstances in which or reasons for which our party suffered defeat at the election. I met in that connection Kalkaiah Binnal Surpanch of Thondihal Panchayat. He told me that he had originally intended to support our party, but could not do so in view of a certain understanding brought about between himself, C. H. Patil and Basangouda in respect of some payment of wages. He also showed me a letter received by him from Pundangouda and Basangouda of Halkeri about the said matter. He gave that letter to me. This is that letter. Marked for identification Ex. P. 44. Sometime later I handed over that letter to Sirur Veerabhadrapa."

In the course of cross-examination he said:

"Kalkaiah did work for or make propaganda for the Loka Seva Sangha during the Elections. That was the reason why I went to him."

113. P.W. 22 Neelappa says that he did not take any interest in any of the candidates at the Elections, and that his talks with Basangouda at Halkeri, Kalkaiah and Halkeri people at Thondihal spoken to by him in the course of his chief-examination were the only occasions where he had anything to do with the Elections or discuss election matters. He, however, admitted that he was later appointed as polling agent of the L.S.S. candidates at Thondihal.

114. Before proceeding to discuss the probabilities and the acceptability or otherwise of this evidence, I might also mention another fact which is not without some importance. One of the important circumstances furnishing the background for this case of bribery is that L.S.S. had high hopes of great and considerable support from the voters of these two villages, and that the result of the Election disclosed that the said hopes were perhaps not well-founded. P.W. 13 Ajjaiah, who, it should be remembered, is the Secretary of the L.S.S., has categorically stated in the course of his cross-examination that in actual event the L.S.S. secured less votes than the Congress candidates. This statement of the actual result is not correct. In actual event, the L.S.S. candidates did secure much more than the Congress candidates. That fact is admitted by Sirur Veerabhadrapa as P.W. 24. His case or statement in the course of his deposition is that he expected a much larger majority than was actually secured by the L.S.S.

115. As the case depends upon the oral evidence of a single witness and so far as the respondent C. H. Patil is concerned, his evidence is of total denial of the case and particularly the allegation that he had consented to Pundangouda and Basangouda conducting themselves in the manner aforesaid, I have no assistance in deciding upon the acceptability or otherwise of this evidence except an ascertainment of the probabilities to the extent it is possible to do on the basis of the circumstances placed on record by other evidence and by having recourse to the rule as to burden of proof where any attempt by me to get at the truth is not fully successful on account of the paucity of evidence or lack of assistance rendered to me by this or the other evidence.

116. In the first instance, it appears that the entire case is built upon the theory that in respect of the construction of Yerehanchinal-Mudhol road C. H. Patil had engaged some of the residents of Thondihal and Bandihal as road-coolies and had kept their wages in arrears. I have already accepted the evidence of C. H. Patil that his information about this question is based upon what he is said to have heard nearly or more than six years before he ever thought of standing for Election. On the question whether there were any such arrears at all, there is not before me any direct evidence of any person who has personal knowledge of that matter. Only persons who speak about those arrears are P. W. 22 Neelappa, P. W. 13 Ajjaiah and P. W. 24 Sirur Veerabhadrapa. Everyone of these witnesses admits that his information about this question is based upon what he is said to have heard from some of the residents of Thondihal and Bandihal. Out of these three witnesses, Ajjaiah and Sirur Veerabhadrapa are not residents of Thondihal at all. I may, therefore, safely leave out of account their evidence as evidence of a character not sufficient to assist me in deciding upon the question whether or not there were any wages kept in arrears by C. H. Patil. On this matter, the evidence of P.W. 22 Neelappa may be of little more value because he is admittedly a resident of Thondihal and one of the members of the panchayat. He was

also given the names of some of the residents of Thondihal who are said to have worked as road-coolies under C. H. Patil. On being questioned as to the source of his knowledge about these alleged arrears, the candid reply he made was that in a small village, matters of this type become the subject of talk and as an elder in the village or a member of the panchayat, the said talk also reached him in the normal way in which village gossip reaches him. If that is all he could say in spite of the fact that he is a local resident, I do not feel sufficiently confident to accept as true the information received by him from somebody who has not come before me to depose on his own knowledge about the existence or otherwise of these arrears of wages.

117. Assuing for a moment that the actual situation might have been not one of regular arrears, but something in the nature of a dispute raised by the road-workers either claiming more wages or wages at a higher rate,—which I believe is what is sought to be conveyed by the expression “contentious charges” used in the petition,—the question arises whether a dispute, which must have taken place before the end of 1960, could retain so much strength or potency in it as to operate as a live factor for consideration during the Election campaigns of January-February 1967. It appears to me that if ordinary human probabilities are taken into account, it is highly unlikely that people particularly in the position of daily-wage earners would retain or would have so much patience as to keep alive a dispute for so long as a period of six years. It is, of course, possible that in the course of an Election campaign somebody, who is interested in or against a candidate, may work up old differences or disputes with a view to improve or spoil the chances of one or other of the candidates. But, whether there was any such attempt on the part of anybody in Thondihal to work up these old disputes, and if so, who did so and with what motive and in what circumstances, is not spoken to by any witness. In the absence of any such evidence, it appears to me dangerous to proceed upon the assumption that there was such a vicious atmosphere brought about against C.H. Patil of the type which is the necessary foundation of the case of bribery now sought to be made out in this petition.

118. Another question that arises with some acuteness is whether Basangouda and Pundangouda who are said to be interested in C. H. Patil would have thought of enlisting the support of such a person as Kalkaiah who was admittedly working for the L.S.S. The attempt on their part if true, would be an attempt to win-over the dissatisfied labourers. If there was such a dissatisfaction in fact, it would be a circumstance of considerable value to the L.S.S. and its candidates at Election. If, as admitted by Ajjaiah, Kalkaiah was a worker and supporter of the L.S.S. in Thondihal and as Kalkaiah occupies so important a position as the surpanch of the village, is it at all likely that Kalkaiah would have given up the opportunity of working up the feeling against the Congress candidate on its strength? Is it likely that he would have readily succumbed to the requests or attempts or blandishments of Basangouda and Pundangouda to give up a position of considerable advantage to the L.S.S. the party for which he was working? It should indeed call for great tact and diplomacy on the part of any one, first to work down the admitted predilection in favour of the L.S.S. which Kalkaiah must be held to have entertained and then turn them round to a direction working in favour of the opposing candidates put up by the Congress.

119. But, what surprises me more than anything else is the evidence of P.W. 13 Ajjaiah to the effect that Kalkaiah told him that he wanted very much to help the L.S.S., but became helpless in that regard and could not render sufficient assistance to the L.S.S. because of an understanding said to have been arrived at between him and C. H. Patil, Pundangouda, Basangouda and others. If at all there was an attempt on the part of Pundangouda and Basangouda to persuade the villagers of Kalkaiah and through him the unpaid road-workers, the sequence of the events as narrated by P. W.22 Neelappa appears to be more natural than what Ajjaiah deposes to.

120. That takes me to the consideration of the value which a court can safely place on the evidence of P.W. 22 Neelappa in this regard. He no doubt states that he was not at all interested in any of the candidate and took no interest in election matters at all. In the context of the evidence, this statement may be true or untrue. It is not possible for me to say one way or the other. But one thing which cannot be left out of account is that he was later on appointed a Polling Agent of the Loka Seva Sangha, a circumstance which shows that the Loka Seva Sangha had some confidence in him. A Polling Agent is a person who is expected to protect the interest of the candidate for whom he is functioning as Polling Agent. Ordinarily, therefore, we may take it that a candidate will not select a person as Polling Agent in whom he has no reason to repose trust or

confidence. One might, therefore, ask whether Neelappa was not a person who had at least some sympathy or predilection in favour of the Loka Seva Sangha. Whether or not he had any predilection against the Congress is a question of no materiality. He is a member of the Panchayat. However much one may protect that a Panchayat is purely a village body interested in the uplift of the village, it is not possible to get rid of the human probability in the present day state of affairs that members of the Panchayat will naturally have sympathy or affiliation for or against one or other of the political parties of the country. If so, it is not quite easy to accept the suggestion that P.W. 23 Neelappa was a completely colourless person so far as the elections are concerned or may be regarded as such a completely disinterested witness as to inspire complete confidence.

121. One should also examine the extent of the intimacy or mutual trust that might have developed between P.W. 22 Neelappa and Basangouda, to be taken into confidence in a matter of a nature which in the circumstances of the case would certainly amount to corrupt practice. Some questions have been put to him in the course of his cross-examination to make out that there could not have been such close intimacy between them as to make it readily believable that Basangouda on a chance meeting in Halkeri without any premeditation, would immediately take him into confidence and discuss election matters. Mr. Patil, learned counsel for the petitioner has argued that both being persons of some importance in neighbouring villages, there is nothing surprising in Basangouda asking the natural question about the alleged opposition to C. H. Patil in Thondihal. I shall assume for the purpose of examining this argument that the case of the alleged opposition has in fact been made out, though evidence is by no means clear. But the matter is not one of the topics which may ordinarily arise for discussion or talk between villagers or neighbouring villagers. The matter has direct and specific reference to an individual in whom Basangouda is said to be directly interested. If so, the natural human preference would be in favour of his relation C. H. Patil. He may, therefore, be expected to take steps which would work out to his benefit and not take any step which might work to his detriment. If, as I have already stated, there is some reason for believing that P.W. 22 Neelappa was at least a sympathiser of the Loka Seva Sangha, Basangouda would think twice before he makes known to P.W. 22 Neelappa a course of conduct on his part which might be utilised to the detriment of C. H. Patil. I do not think that the importance of this aspect can at all be whittled down or forgotten, because we have clear evidence in this case of Sirur Veerabhadrappa collecting information which may be of use in an election petition of this type even before the polling took place. This is not the first time that the Loka Seva Sangha and the Congress candidates have come to court with election petitions and this is not the first time that election dispute between the identical parties have been brought before Court. Hence, if at all Basangouda was interested in even bribing the villagers of Thondihal for the benefit of his relation C. H. Patil, he might be expected to do it in a manner better than he is supposed to have done in this case, namely, of trying to secure the assistance of a person like Kalkaiah, who admittedly was a worker of the Loka Seva Sangha and make known his proposed nefarious activities to a person whom, if he had any wisdom at all, he would recognise or should have recognised as sympathiser of L.S.S.

122. There is, however, strong reliance placed on the letter Exhibit P. 44 on behalf of the petitioner. It has been very strongly pressed upon me that P.W. 22 Neelappa has actually sworn that the letter was written in his presence and the contents thereof actually read out to him and that there is nothing in the cross-examination of his witness to show that the said positive evidence in examination-in-chief is being challenged. If by challenge is meant a positive suggestion to the witness that his deposition in this regard is false, there is no such challenge. It appears to me however that any such suggestion is not only valueless, but also perhaps beyond the bounds of proper cross-examination. No witness is going to admit that what he has deposed is false, and it is not for any body except the Court, in the manner contemplated by law, at the end of the trial to determine the truth or otherwise of the evidence. Even, a Court can only say that it is difficult for it to rely upon a piece of evidence. Instances are rare where the Judge can definitely say that a particular statement of a witness is absolutely false. If, however, by challenge what is meant is the placing on record of circumstances which might militate against the acceptability of a statement made in chief-examination, such challenge can be substantiated not only by eliciting information from the witness himself in cross-examination but also from other witnesses who are examined on behalf of the cross-examining party himself or by the opposite party.

123. Now the cross-examination has brought out two or three very important circumstances. Neelappa has admitted that the only occasion on which Basangouda had discussed election matters with him was when he happened to meet him outside Annadanaswami Mutt in Halkeri. He has also admitted that at the time the letter was written on the Katta outside the said mutt, there were present no body except Basangouda and himself, the witness. The third admission the witness has made is, that the only occasion when Kalkaiah had spoken to him on election matters was when he sent for him on the evening of Neelappa's return to Thondihal.

124. Certain inferences necessarily flow from these admitted circumstances. If Basangouda had no occasion whatever to discuss election matters with Neelappa prior to his meeting outside Annadanaswami Mutt in Halkeri, then the various circumstances discussed by me above, make it impossible to believe or at any rate accept readily the evidence that Basangouda chose this moment to discuss election matters with this witness.

125. Likewise, if Kalkaiah had not at any time discussed election matters with this witness, I have found it difficult to find any reason which persuaded Kalkaiah to send for Neelappa after receiving the letter Exhibit P-44. It is not the case nor is there any evidence to show that the letter Exhibit P-44 contains anything which would have persuaded Kalkaiah to send for Neelappa. Indeed, if Neelappa's evidence has to be accepted, Kalkaiah was quite unaware of the fact that the letter had in fact been written in the presence of Neelappa. When Kalkaiah told Neelappa that he has received a letter from Basangouda, he at once told him that he already knew everything about it.

126. If there is no ascertainable or discernible reason either on the ground of previous association in election matters or on the ground of any other known probabilities for Kalkaiah and Neelappa to be associated with the letter Exhibit P-44 and the subject matter thereof, one may as well ask whether the only reason why both of them are associated by the evidence with this matter is not the fact that both of them are either workers or sympathisers of L.S.S.

127. In this view, it becomes immaterial whether Kalkaiah was examined as a witness or not. As Mr. Patil says he would have had no more to add to what Neelappa had deposed to and if as Ajaiah had stated he was a strong supporter of L.S.S. in Thondihal, his evidence could not have been different from that of P.W. 22 and would not therefore add anything to or subtract anything from the evidence already brought on record.

128. I come finally to the value to be attached to the letter itself Exhibit P-44. Some argument has been addressed on the legal question whether there is in this case anything more than the proof of the writing and signature within the scope or ambit of Section 67 of the Evidence Act and whether it was not necessary for the petitioners to go further and adduce evidence in proof of the contents of the letter. Although where proof is limited in scope as indicated by Section 67, contents cannot be said to have been proved, if the evidence of P.W. 22 Neelappa that he actually saw it being written by Basangouda is to be accepted, this question of law will not arise. The question, therefore, is one of fact and one of substance and not of law.

129. The argument on behalf of the petitioner is that unless strong case is made out for totally throwing out the evidence of P.W. 22, there is no reason to postulate on its basis that the contents of the letter are not proved at all even formally,—the only question for consideration by the Court according to the argument being the value one can attach to the contents.

130. It is a part of this case or an aspect of this case of the petitioners that Basangouda who is said to have written this letter and Pundangouda who is said to have signed it along with Basangouda, have been kept out of the witness box either by the respondents or on account of their obvious interest in C. H. Patil. These two persons were cited as witnesses by the petitioner and also served with summons and were awaiting their turn for being examined. The Court was then engaged in recording the evidence of Channappagouda Master, who also according to the case of the petitioner, is a witness favourably disposed to the respondents and had to be examined by the petitioner for the purpose of completing the evidence. In the course of examination of Channappagouda Master and in the circumstances, to the details of which I shall make reference latter, permission sought by the learned Counsel for the petitioner to cross-examine him, was refused by me. Thereafter the petitioner filed a memo giving up both Pundangouda and Basangouda. At that stage, I requested Mr. Venugopalachari, counsel for the respondents to state if he has no objection, whether he proposed to examine either or both of them on his side. He, after consultation and consideration, told me that he was not going to examine the said persons on his side. The same day,

the petitioners filed I.A. No. III praying that the Court may examine Pundangouda and Basangouda (and another person called Dhanangouda, to whom I shall refer later on) as Court witnesses.

131. In making this prayer, it is distinctly stated that these two witnesses are adverse to the petitioner. That is to say that they are not likely to depose in favour of the petitioner. It is stated by Mr. Patil, in my opinion quite rightly, that this opinion about the disposition of the witnesses was entertained by the petitioner not for the first time when I refused permission to the petitioners to cross-examine Channappagouda Master, but had been entertained by them even when they first made up their mind to cite Channappagouda Master and these two persons as their witnesses. In my order refusing permission to cross-examine Channappagouda Master, I have expressed the view, that a party who with the definite information or apprehension that a particular person may not depose in his favour or may be actually expected to depose against him, cites the said person as a witness, he must be held to take the chance of the witness making some answers in his favour and that on grounds or ordinary considerations of fairness and on principle of law, he must take the consequences of the witness making answers adverse to his interest.

132. Apart from that consideration, there is one other reason to be stated, which I though prudent not to mention in my last order. It will be seen that both Channappagouda Master as well as these two witnesses, Pundangouda and Basangouda, are persons actually charged with the commission of corrupt practice by the petitioners. Whether the charge is true or not, one thing that may be taken as almost certain (with rare exceptions should there be any at all) is that they will not come to Court and admit that they have committed corrupt practices. The Representation of the People Act contains provisions for a person to move the Court to relieve him of the consequences of his giving evidence admitting corrupt practices or admitting participation in circumstances likely to expose him to penal consequences and the Court is empowered to grant him that protection if it is satisfied that the person as a witness has made a true and full statement of the facts. Whatever may be the use to which the said provision may be put, inference that is inevitable there from is that the law proceeds upon the assumption, which is true from the point of view of normal human nature, that no man will readily admit that he is guilty of an offence or a corrupt practice.

133. It is also another rule of law, that the burden of proving corrupt practice is on the petitioner who alleges its commission. He cannot be heard to say that he must be held to have discharged that burden by merely citing persons who have committed corrupt practices as his witnesses and then giving them up on the ground that they are adverse to his interests or by putting them in the witness box and seeking permission of the Court to cross-examine them. It may be that in certain cases, the respondent may cite those witnesses for the purpose of eliciting from them denials on oath of the facts alleged against them in the petition, in which case, it will be open to the petitioner to cross-examine them. But he cannot insist upon the respondent examining those persons as witnesses for the mere purpose of eliciting denials and subject them to cross-examination by the petitioner. If he cannot insist upon the respondent examining them for the purpose of furnishing him with an opportunity of cross-examining them, I do not see any better reason why he should be provided with that opportunity by myself citing them as court witnesses.

134. Apart from that, the power of the Court to call upon a person to give evidence as Court witness has to be exercised for the purpose of determining the truth and doing complete justice between the parties and the action of the Court must be governed and controlled by its duty of maintaining absolute fairness not merely to one side, but to both the sides. Any action of the Court which places one party at an advantage and the other party at disadvantage, certainly destroys what is regarded as fairness in trial. When the law places upon one party the burden of providing any particular fact, it must be taken that the law considers it fair to insist that that party alone shall prove it. That burden is to some extent lightened by the law itself by prescribing presumptions of law in cases of considerable importance and materiality and presumptions of fact in other cases, permitting the court to make use of all the experience and knowledge of human nature available to it to relieve the party who has the burden of proof from proving certain facts which may be steps in the course of discharging the said burden of proof.

135. To call upon either Pundangouda or Basangouda or both of them to give evidence, is to call upon them to state on oath whether they have or have not participated in the corrupt practice. The one object with which the petitioner

wants me to call them as court witnesses is to prove or disprove the fact alleged by the petitioner and deposed to by P.W. 22 Neelappa that Exhibit P-44 was written by Basangouda. If Basangouda comes and admits that he has written that letter, that admission, in my opinion, would be in the nature of confession or at least an admission of his having conducted himself in a manner which is discountenanced by the law. If the letter may be read as an offer of bribe or an attempt at bribery, surely it is at least a wrong act. Whether it amounts to corrupt practice or crime, it is not necessary for me to decide. If that much could be said about it, the letter allegedly signed by Basangouda and also said to be signed by Pundangouda, must be regarded as being on a par with a confessional statement. Before a person could be held to a confessional statement reduced to writing, much higher standard of proof than is provided by the oral evidence of P.W. 22 Neelappa in this case is necessary.

136. For these reasons, I am not inclined either to accept as satisfactorily proved the truth of the contents of Exhibit P-44 or to grant the request of the petitioners and to call either Basangouda or Pundangouda or both of them to depose as court witnesses.

137. Mr. Venugopalachari had also pressed some arguments on the ground of an obvious departure from the pleadings. He says, for example, that whereas the petition says that both Basangouda and Pundangouda wrote a letter, evidence shows that only Basangouda wrote it; and that whereas the petition states that the alleged offer of bribe was spurned by the villagers, the evidence of P.W. 22 Neelappa shows that there was an exchange of offers and counter-offers between the parties, resulting in no settlement and the evidence of P.W. 13 Ajjah is to the effect that there was an actual understanding arrived at. He also says that there is in the relevant paragraph of the petition a statement to the effect that Basangouda and Pundangouda were all along in the company of C. H. Patil throughout the constituency.

138. In the light of the probabilities discussed by me, I do not think it is necessary to depend on those variations or alleged departures from pleadings to assess the value of the evidence. So far as the allegation that both the goudas moved together is concerned, I shall have occasion to refer to it at a later stage.

139. For all these reasons, I am not satisfied that the petitioner has made any case even of suspicion so far as corrupt practice of bribery is concerned.

140. My finding on Issue No. 10 in Election Petition 6 of 1967, therefore, is that the petitioner has failed to prove the circumstances set out in para III(D) of the petition or that the respondent C. H. Patil had been guilty of the corrupt practice of bribery defined in sub-section (1) of Section 123 of the Representation of the People Act.

141. The next topic, namely, corrupt practice under sub-section (3) of section 123 of the Representation of the People Act, is a topic on which the petitioners have adduced considerable body of evidence and have made strenuous efforts to make out their case against the respondents. Although the bulk of the evidence is oral, there are a few documents available for testing the value of the oral evidence. The petitioners have also examined Channappagouda Master himself as a witness on their side,—a step fraught with some danger to the case of both the sides.

142. As the volume of evidence is considerable, it is better to ascertain at the very commencement the exact nature of the case sought to be proved by the petitioners and the nature of the pleas raised by the respondents. As already stated, the petitioners' case is stated in identical terms in both the petitions. It will be sufficient, therefore, to refer to the averments contained in Election Petition 3 of 1967. They are contained in paragraph III(C) of the petition. The petitioners start by saying that Channappagouda Magon was canvassing agent of both Sanganna and C. H. Patil. They next state that one Gadigeppa Desai of Mudhol as well as his son Basavaraj were among the canvassing agents of the respondents. Then follows the case :—

"A booklet entitled, 'Congress Tattva Prachara Padyavali', composed by the said Channappagouda Master was got printed at the Hombali Brothers, Printers, Gadag, in January 1967 and the songs or poems in the said booklet were sung by the said Channappagouda Master all over the Yelburga Constituency in the propaganda meetings of the respondent and of the said Channabasangouda Patil, both of these candidates also acting as each other's canvassing agent. Hundreds of the said booklets were printed and distributed all over the constituency

during the entire period available for election campaigning for both of the said Congress Candidates.” Thereafter a description of the picture printed on the cover of the booklet is set out followed by a reference to some of the songs contained in the padyavali, which according to the petitioners’ case amount to an appeal in the name of religion. The statement of the case thereafter continues in the following terms:—

“What has therefore been laid down as corrupt practice in this behalf has thus been widely indulged in by the respondent and his canvassing agents with the necessary consent both of the respondent and his election agent Sri C. S. Hiremath. The booklets have been distributed and the songs in it have been sung in practically every small and big village in the constituency. They were sung by the said Channappagouda Master who moved about in the constituency in conveyances provided in common by the respondent and the said Congress candidate for the Assembly Constituency. Besides, the said Channappagouda Master is also a supporter and canvassing agent having canvassed votes for the respondent and his running mate, by going from house to house at Yelburga and having delivered speeches also all over the constituency in which he asked voters to vote for the respondent and his running mate and also by subscribing to very many appeals for voting for the said Congress candidates by way of printed pamphlets”.

143. The answer of Sanganna in paragraph 8 of his written statement is, briefly, as follows:—

144. He denies categorically that Channappagouda Master was canvassing agent of his or of Channabasanagouda Patil. He asserts that at no time was he canvassing agent of either of them during the election. Referring to the booklet he complains that the booklet has not been produced by the petitioner and that therefore he is handicapped in the matter of stating his defence. He asserts that he has not seen the booklet anywhere in his constituency at any time during the election period. He also states that he has not published or caused the publication of the booklet at any time during the period of the election. He denies the statement that common conveyance was furnished to Channappagouda Master by himself and C. H. Patil. He also denies the consent by either himself or his election agent C. S. Hiremath, as alleged in the petition.

145. C. H. Patil’s answer is contained in paragraph 10 of his written statement. The stand taken by him is more or less the same as that of Sanganna. He states, for example that neither of them had enlisted the support of Channappagouda Master or of Gadigeppa Desai of Mudhol or of his son Basavaraj. He denies that any one of them was his canvassing agent. He states that no conveyance was provided by him and Sanganna to Channappagouda Master. Referring to the booklet and its non-production with the petition, he states that no such booklet was printed, published, circulated or its contents sung or recited by Channappagouda Master in all or any of his meetings. The allegation that hundreds of such booklets were distributed all over the constituency is also denied as false. He reiterates towards the end of the paragraph that Channappagouda Master was not provided with any conveyance by him nor was he a supporter or canvassing agent of his nor did he go from house to house in Yelburga or deliver speeches in any part of the constituency either with his knowledge or with his consent.

146. It will be seen from this summary of the pleadings that the central feature of the case is that the religious appeal was contained in some of the songs of the padyavali, that they were sung or explained by Channappagouda Master and nobody else, that the actual commission of the corrupt practice was by Channappagouda Master and no body else and that the respondents are sought to be made responsible for the consequences of the corrupt practice on the ground that they had consented to the commission of the said corrupt practice by Channappagouda Master. Although Channappagouda Master is described as an agent, the petitioners do not stop short of that case, because if he was only agent of the respondents, the petitioners cannot successfully get an order invalidating the election of the respondents without further proof of the fact that the commission of the corrupt practice has materially affected the result of the election so far as the respondents are concerned. The petitioners have been taken upon themselves the burden of proving consent, their case being that the consent by the successful candidates respondents to the commission of the corrupt practice by Channappagouda Master was sufficient *per se* to invalidate their election.

147. There are certain other considerations flowing from the nature of the pleadings and their relation with the nature of the evidence adduced to which it is not necessary to make a reference at this stage.

148. As already stated by me, the petitioners rely upon certain documents. They are some propaganda pamphlets published either by the Congress or in the interest of their candidates by their workers and sympathisers. These pamphlets are utilised by the petitioners to make out a case of agency or at any rate to make out that Channappagouda Master was not in all respects in the position of a mere volunteer, but a person whose activities have some larger significance from the point of view of Congress election campaign. It would be convenient to deal with these pamphlets in the first instance in order to avoid break in the continuation of discussion or repetition of some matter.

149. Although many have been filed, some of them are copies of each other. Excluding for the present two papers marked Exhibits P-21 and P-34 which have a direct bearing on a propaganda meeting of the Congress said to have been held in Kuknoor on the 6th of February, 1967, which therefore it will be more convenient to discuss in connection with the evidence bearing on that meeting, there are altogether seven pamphlets, namely :

- (1) Exhibit P-30 which is the same as Exhibit P-33, both produced by the petitioner;
- (2) Exhibit P-31 which is the same as Exhibit P-32, both produced by the petitioner;
- (3) Exhibit P-35 produced by the petitioner which is the same as Exhibit P-50 produced by Channappagouda Master;
- (4) Exhibit P-36 produced by the petitioner which is the same as Exhibit P-49 produced by Channappagouda Master and Exhibit P-60 produced by P.W. 19 Kotrappa;
- (5) Exhibit P-37 produced by the petitioner which is the same as Exhibit P-59 produced by the petitioner the abovenamed Kotrappa, P-W-19;
- (6) Exhibit P-38 produced by the petitioner;
- (7) Exhibit P-47 which is the same as Exhibit P-58 produced by P.W. 19 Kotrappa.

150. I may first dispose of Exhibit P-38 which purports to be an appeal for votes addressed to Kustagi Taluk voters by Dhanangouda Patil, President of Kustagi Taluk Development Board and certain other persons. It does not contain the name of the printer. It was produced by the petitioner, and put to one of his witnesses Basangouda, P.W. 11. It has been marked only for identification. As there is no name of the printer printed thereon, no printer has been examined to prove the fact of his having printed the same. Dhanangouda whose name is printed thereon is admittedly the President of the Taluk Development Board. He is one of the persons who is said to have taken part in two meetings addressed by the Minister for Education Mr. S. R. Kanthi in Kustagi and in a neighbouring village called Bichkal. Sanganna was asked in the course of cross-examination whether after seeing this pamphlet among the papers produced in Court he had made any enquiries with Dhanangouda about the same. He answered in the affirmative. But no further questions were put to him as to what the result of the enquiry was.

151. In these circumstances, it is impossible to hold that this pamphlet is even formally proved, much less, therefore could any reference be made to the contents thereof.

152. Dhanangouda was one of the persons cited as witness by both sides in their lists. He was present in Court in answer to summons issued on behalf of the petitioners, but was given up along with Pundangouda and Basangouda, to whom I have already made reference. He is one of the persons who is sought to be called as a court witness in I.A. No. III.

153. Except that his name appears printed at the foot of this pamphlet and a couple of witnesses have referred to his presence at the meetings in Kustagi Constituency mentioned above, there is not much of a point in examining him either to prove his activities or work, or sympathies in relation to or from the point of view of any issue framed in the case or from the point of view of facts relevant to those issues. If, as I think, the only purpose of examining Dhanangouda would be to prove the contents of this pamphlet, I do not think that the case of either side is going to be advanced or prejudiced. His examination, therefore, appears to be quite unnecessary or of such little value as to make it quite unnecessary for the Court to exercise its power to cite him as Court witness.

154. As this disposes of I.A. No. III, it is hereby dismissed.

155. Exhibits P-30 and P-31 are proved through the Printer Mudbasappa, P.W. 20, of the Bharthi Press, Gajendragad. His evidence, briefly, is that these were printed on orders placed by Siddappa Karandi of Yelburga, in accordance with the text in manuscript furnished to him by the said Siddappa Karandi. The original manuscript texts are Exhibits P-62 and P-63 in relation to Exhibits P-31 and P-30 respectively. Both the manuscripts contain the signatures of Siddappa Karandi. The witness Mudbasappa says not only that he is acquainted with Siddappa Karandi and his writing and signature, but also that the said signatures on Exhibits P-62 and P-63 were affixed by Siddappa Karandi in his presence. It can, therefore, be taken as proved that these two pamphlets Exhibits P-30 and P-31 were printed on orders placed by Siddappa Karandi and that the texts thereof are in accordance with the manuscript furnished by Siddappa Karandi himself.

156. So far as Exhibit P-31 is concerned, there is nothing in it except that it is an appeal for votes in favour of the Congress candidates purporting to have been issued in the name of a committee called 'Chunavana Prachara Samiti, Yelburga' i.e. Congress Election Propaganda Committee, Yelburga.

157. The importance of Exhibit P-30 is that it gives the names of 102 residents of Yelburga as persons who are appealing for votes in favour of Congress candidates Sanganna and C. H. Patil, along with the Secretary and members of the Yelburga Congress Mandal Committee. The twenty-fifth name therein is that of Channappagouda Master.

158. Although Sanganna could not speak with personal knowledge or deny the truth of any circumstance relating to Exhibits P-30 and P-31, C. H. Patil has deposed to certain definite facts. After inspecting these documents in Court, he made enquiries with Siddappa Karandi. He admits that Siddappa Karandi is the President of the Yelburga Congress Mandal Committee. He also stated that upon enquiry Siddappa Karandi told him that he had got these two pamphlets printed. According to C. H. Patil, Siddappa Karandi is an honourable person and he—C. H. Patil has no reason to think that Siddappa Karandi would lend his name to any falsehood or statement of fictitious state of affairs in printed pamphlets. It is also the statement of Sanganna in witness box, that if it is shown that these pamphlets were actually got printed or published by Siddappa Karandi, he would not call them spurious.

159. On this evidence, it may therefore be taken that Exhibits P-30 and P-31 are genuine publications made by Siddappa Karandi, the President of the Yelburga Congress Mandal Committee.

160. The printing of Exhibits P-36, P-37 and P-47 is proved by the evidence of P.W. 19 Kotrappa, Proprietor of the Arvind Press of Koppal.

161. According to his evidence, Exhibit P-47 was got printed by one Veerabhadrappa Koralahalli, a broker of Koppal, on behalf of Manickchand Mehta, a merchant of Koppal. It is an appeal for votes in favour of congress candidates issued after a meeting of the merchants held at Manickchand's place at Koppal on the 10th February, 1967. As Sanganna admits both the calling of the meeting and his presence there as well as the issue of the pamphlet consequent thereon, I need not discuss the evidence further. It may be taken as a genuine document issued by Manickchand.

162. Exhibit P-37, according to the evidence of P.W. 19 Kotrappa, was got printed by one K.V. Angadi of Chikkamyageri. He deposed that the order for printing was placed with him by the said Angadi. He produced corresponding bill Exhibit P-59A and deposed that the signature in Kannada script reading Kuberappa Angadi, was affixed in his presence by the said person. Sanganna says that he knows nothing about a person called Angadi of Chikkamyageri or even whether a person of that name exists. He appears to have made some enquiry through one of his workers after inspecting the paper's in the Court, but as no local enquiry either by himself or by his workers were admittedly made by him, his evidence is of no value in determining whether or if so, the said Kuberappa Angadi had issued this pamphlet. Sanganna's evidence can be taken to mean that he disowns the document and does not admit that he had anything to do with its publication. C. H. Patil in his evidence says that he had heard of a person by name K. V. Angadi, but had no occasion to meet him and has no acquaintance with him.

163. In these state of affairs, the only thing that can be taken to have satisfactorily proved on the evidence of P.W. 19 Kotrappa is that a gentleman by

name K. V. Angadi of Chikkamyageri had in fact placed an order with him and got this pamphlet printed

164. The witness had been called upon to produce the originals of these pamphlets. He says that he had sent the originals by registered post to Court under cover of a letter Exhibit P-53 dated 10th July, 1967. The office of this Court finding that no papers were annexed to or enclosed with the letter, wrote to him asking him for papers. He replied that he had in fact sent those papers and that he had spent as much as one rupee on postage. I have caused a search to be made in the office of this Court and no original papers accompanying the witness's letter Exhibit P-53 could be traced. Although the witness has made the above assertion on oath, some doubt was sought to be cast on his answers by bringing on record the fact that in the previous election petition between Shivamurthi Swamy and Sanganna after the 1957 elections, this witness had omitted to produce an original document called for from him and pleaded loss of the original.

165 He has deposed in his evidence that by original order he always understands the original manuscript given to him by the customer for printing.

166 Although in the matter of having printed the document, his evidence could be accepted and although there is no reason to disbelieve him when he says that a customer by name Kuberappa Angadi had in fact signed on Exhibit P-59A, the bill, it must be held that there is no original document on the strength of which or on the basis of which the author of the original text could be identified or be connected with either Sanganna or C.H. Patil.

167. Hence, the proof of this matter goes so far as this only that one K.V. Angadi had got this pamphlet printed at P.W. 19 Kotrappa's press in Koppal and signed the corresponding bill Exhibit P. 59 A dated 13th February, 1967, and that he took delivery of the same, according to the evidence of P.W. 19, on the same day i.e., 13th February, 1967.

168. The third document proved through P.W. 19 Kotrappa is Exhibit P. 36, the pamphlet corresponding to which produced by him is Exhibit P-60. Exhibit P. 60A dated 4th February, 1967, is the bill. The evidence of the witness is that the pamphlet was printed on the order placed with him by Channappagouda Master and that the bill was paid by him and the printed pamphlets delivered to him on 4th February, 1967. In the bill book, another bill contained the signature of Channappagouda Master was shown by the witness in the course of cross-examination, marked Exhibit R-11, which is dated 2nd February, 1967. The author of the pamphlets Channappagouda Master himself has deposed that he got two pamphlets printed at Arvind Press of P.W. 19 Kotrappa. Those pamphlets are Exhibits P-49 and P-50. Exhibit P-49 corresponds to Exhibit P-35 produced by the petitioners and Exhibit P-50 corresponds to Exhibit P-35 produced by the petitioners. There is no printed pamphlet corresponding Exhibit P-35 produced by printer P.W. 19 for the reason that he was not called upon to produce any pamphlet corresponding to Exhibit P-35 and the reason for the said omission is, in my opinion, the fact that Exhibit P-35 produced by the petitioner does not contain the name of the printer.

169. However, on the evidence of Channappagouda Master, the authorship of the text, accuracy of the text as well as the fact of printing of the two pamphlets are Exhibits P-49 and P-50. Exhibit P-49 corresponds to Exhibit P-36 produced by these numbers and not by the numbers given to those produced by the petitioners.

170. Of the Padyavali of Channappagouda Master, we have four copies brought on record Exhibits P-24 and R-8. former with cover and the latter without it, were produced by the printers. Hombali Brothers, of Gadag, through P.W. 1 Sheshagiri Hombali. Exhibit P-28 is the copy produced by Channappagouda Master and Exhibit P-48 is the copy produced by the petitioners. There are some differences between these copies, of which I should make a note even at this stage. Exhibit P-24 produced by the printer has of its cover the name of K. C. Tenginakal, as the publisher. On the 18th page of the text of both Exhibits P-24 as well as Exhibit R-8, there is the following Kannada text:—

Congress Zindabad
Congressige jayawagali
Jaya Jawan Jaya Kisan
Jai Hind.

At the end of the 16th page of Exhibits P-28 and P-48, there is the following Kannada Text:

Congress Zindabad

Congressige Jayawagli

Congressina hurlaalu—C. H. Patil

Congressina gandumettu—Yelaburgi Taluku

On the cover of both Exhibits P-28 and P-48, the name of Gadigeppa Desai of Mudhol is printed as the publisher.

171. I may now take up for examination and consideration the oral evidence of Channappagouda Master as P.W. 18. He had originally been summoned to produce certain documents and pursuant to the said summons he produced a copy of the Padyavali Ex. P. 28 and copies of two pamphlets issued by him Exs. P. 49 and P. 50. He was later summoned to appear and give evidence on behalf of the petitioner.

172. In his examination-in-chief, he identified the exhibits P. 28, P. 49 and P. 50 as documents produced by him pursuant to the summons. When his attention was drawn to the last four lines on page 16 of the Ex. P. 28, he stated that the last two lines mentioning the names of C. H. Patil and the Yelburga Taluka were not of his authorship. He was asked whether he had in his possession original of Ex. P. 28 to which he replied:

"I do not have it with me. I have given it to the press, i.e., Hombali Brothers of Gadag."

As it was time for the court to rise for lunch, he was asked to go through the entire text of Ex. P. 28 during lunch hour and state whether there were any other portions of it not in accordance with his original composition. After such study, he reported that except the last two lines on the 16th page, rest of the text was quite in accordance with his original composition. Regarding Exs. P. 49 and P. 50, he was clear that the text was in accordance with his original composition.

173. In the rest of the chief examination, he was asked to give certain description of the picture on the cover, something about worship of Linga by Lingayats and also his interpretation of some of the expressions used in the songs themselves. I shall refer to them at a later stage.

174. He was asked about the persons who had assisted him in getting the Padyavali printed. He stated that the cost of 500 copies printed in the name of K. C. Tenginakai of Gadag (Rs. 25) was paid by the said Tenginakai. The cost of 1,000 copies printed in the name of Gadigeppa Desai of Mudhol was paid, according to him, by some friends of his of Mudhol, who had collected the necessary funds. The cost of printing those copies which he paid to Hombali Brothers was Rs. 50. Of the friends of Mudhol who collected that money, he could give the name of only one person, Gangadharayya. Regarding Gadigeppa Desai, his answers were:—

"I am acquainted with Gadigeppa Desai of Mudhol; I know him by sight but do not have any close personal relationship. The reason for showing his name as publisher in Ex. P. 28 is that Gangadhariah and others mentioned above who rendered financial assistance for printing requested me to do so; I asked them whether it would not be improper to use his name without consulting him, to which they said that they will explain the position to Gadigeppa Desai. I had not met him or taken his consent, before doing so. Subsequently, I have not had any occasion to meet him nor I met him."

In answer to the question, who had taken delivery of the printed copies, he said:—

"I told the press people to deliver the copies with the name of Thengakai to him and the copies with the name of Gadigeppa Desai to one of the gentlemen of Mudhol. I do not know who took deliveries actually. I did not take delivery of them."

175. The circumstances in which he came to compose and got printed Exhibits P-49 and P. 50 were also, according to his evidence, more or less similar. He had gone to attend Jatra of Gavisiddheshwara at Koppal and at that time several

people are said to have come to him (their names he does not know) and requested him to compose these texts and also paid for the expenses of printing. With the money so collected, he himself went to Arvind press, got the matter printed. Gavisiddheshwara Jatra, according to all witnesses of Koppal starts on the second day of the dark fortnight of the lunar month of Pushya and goes on till the Amavasya, the new moon day. This year the first of the days fell on the 28th of January, 1967, Saturday and the Amavasya fell on the 9th of February, 1967.

176. Later on, when he was questioned about his membership of the Congress and the reasons why he described himself as Congress Karyakartha or worker, he stated that he used to be a primary member of the Congress but that for the last about 2 years, nobody had come to him to collect the subscription and that therefore he was not at present member of the Congress. He said that he calls himself a Congress worker, because he is still working in the interest of its ideals but not because he is a member of any of its committees or he is actually authorised by it to work for it.

177. With reference to Exhibits P. 49 and P. 50, while admitting that he knew that the various candidates whose names are mentioned therein, namely, Agadi Sanganna, Virupakshagouda, C. H. Patil were all candidates on behalf of the Congress, he stated that so far as he, as the author of the test was concerned, he was interested only in the congress as an organisation and its ideals but not particularly or specially in individual candidates. In paragraphs 40 and 41 of the chief examination, he deposed as follows:—

"I know Siddappa Karandi. I have seen M. Kishana Rao Vakil—I know Tirumal Rao Vakil. I know Bassappa Rampure; but I have not had any dealings or familiarity with him as I have had in the case of Tirumal Rao Vakil."

"I do not know whether there was any committee called the Congress Election Propaganda Committee in Yelburga during the General Election of 1967."

178. At this stage, Mr. Patil, learned counsel for the petitioners sought my permission to cross-examine the witness under section 154 of the Evidence Act. This request was strenuously opposed on behalf of the respondent by Mr. Venugopalachari and as both the learned counsel wanted to arm themselves with citations for a full and complete discussion of the legal position, the matter was adjourned. After hearing full arguments, I made an order on the 15th of September, 1967, refusing to grant permission to the petitioner to cross-examine the witness, but with certain reservations. I quote below the last operative paragraph of my order:—

"I, therefore, decline to grant general permission under Section 154 of the Evidence Act to the petitioner to put to him questions which can be put in cross-examination by adverse party. In the case of particular matters or particular facts which may appear to be of material importance, I may grant permission to the petitioner's counsel to put leading questions, each matter being considered on its own merits."

As it was late in the evening of Friday, further examination of the witness had to be postponed till the following Monday, 18th of September. On that day Mr. Patil, the learned counsel for the petitioner, filed a memorandum stating that in view of my above ruling, he gives up the witness. Giving up the witness could not of course mean actual wiping out of the evidence already recorded but could only be taken to mean that the learned Counsel has closed his examination-in-chief. I, therefore, called upon Mr. Venugopalachari to cross-examine the witness.

179. The material points elicited in cross-examination, so far as Padavali is concerned are the following. The witness stated that the songs in the Padavali Ex. P. 24 were all composed about 4 or 5 weeks before they were given to Homali Brothers, for printing except the songs on pages 2 and 3 of the cover which he said had been composed some years ago during the Jalpur Session of the Indian National Congress. In answer to the question, what his object was in writing this book, he said:

"My idea was to make known to the people the principles of the Congress (Congress in a Thatwagalu); that the people may acquire a liking or respect for the same and that thereby the country may be benefited."

When he was further specifically questioned as to whether he had written the songs on his own or at the instance of or request of anyone, his answer was:—

"Those who gave me encouragement (Prothsaaha) were my friends of Gadag. That was a month before printing. They were Thotada Gangappa, Kubssad, Himmatmull Satjee, Rathod Mul Satjee, Churchihal Sivappa. These gentlemen said that my ideas about the Congress were excellent and deserved encouragement, and that if I composed these songs, they would take steps to get them printed and published."

Thereafter certain denials were elicited from him. He denied having attended any meeting of the Congress organised for election propaganda, denied having done any house to house canvassing singing the songs either in Yelgurga or in any other town or village. He also denied having gone to places like Kuknoor, Balutgi, Rajur or Yerehanchihal etc., and having made speeches or sung songs at those places.

180. Another question and answer thereto in cross-examination which are of some importance are the following:—

"Q. Where did you get exhibit P-28 from?

A. After I received the summons from this Court, I went to Homball Bros. and got this copy from them."

181. As the information elicited in examination-in-chief and cross-examination appeared to me to have left matters in an unsatisfactory state and as this witness has anyhow been brought to court and as his evidence was of importance on the issues as to the corrupt practice under section 123 (3), I thought it necessary to clarify at least some of the matters arising out of or suggested by the examination conducted by the learned counsel before me.

182. I was not satisfied with the witness's last answer, namely, that he had gone to Gadag to get this copy Ex. P. 28. I therefore, asked him whether he had found anything in the summons issued from this Court requiring him to produce anything which was not in his possession. He stated that he had got the summons explained to him by a friend of his as well as a lawyer and both of them advised him that because the summons required him to produce certain documents published by him and because Padyavall was one such document published by him, it was incumbent upon him to secure a copy thereof and produce the same in this court. Regarding Mudhol gentlemen who had requested him to compose songs, he said, he could not give the names of any of them and that Gangadharayya is one person whose name he remembers, the reason for remembering it being that the said Gangadharayya was a classmate of his. In answer to a further question by me, he made the following important answer:—

"It will be correct to say that the Padyavall was intended by me to be used by Congress candidates at the Election and that the same may be used by them for their election propaganda. In fact there is a song in it actually seeking votes. I did not of course have any individual and particular person in mind."

In Ex. P. 49, he refers to a Padyavall and commends the same for study by the members of the public. When questioned by me about the identity of the said padyavall, he said that it is the same as Ex. P. 28.

183. After admitting that although his present interest was only in the Congress as an organisation, he had no objection to stringing into his songs the names of particular Congress candidates, he made the following answer regarding the last two lines on page 16 of Ex. P. 28 and Ex. P. 48.

"Regarding the mention of the name of C. H. Patil and the Yelburga Taluka on page 16 of Ex. P. 28, all that I meant to say in my chief examination was that I was not aware of the same. I would not have had any objection to the name of the candidate being printed had I been asked, but I would have said that what was more important than the name of the candidate was the Congress Election symbol."

He then made some answers regarding the reference to Buddha Etc., in his poems to which it would be more appropriate to refer at the later stage.

184. After completing my examination, I gave liberty to counsel on both sides to cross-examine the witness, if necessary. Mr. Venugopalachari contended himself by asking one question, and elicited one answer, namely, in Ex. P. 49 he has said that it was not necessary for people to be acquainted with the candidate nor was it voters' responsibility to attach any value to his good or bad character but that all should have regard for the party which had put him up as candidate.

185. Mr. Patil, learned counsel for the petitioner subjected him to some considerable cross-examination—Most of it relates to the religious meaning or reference to the religion in his poems, to which it will be more appropriate to make a reference at a later stage.

186. But two important answers which he elicited from him are the following:

He admitted that the worship of the pair of bullocks, that is, "Jodetthu Poojisuvudu" cannot be said to be a thathva of the Congress. In answer to a question whether coles of Padyavali were available for sale in his book shop, he said:—

"My son attends to my shop. I cannot say on my own information whether he has secured any copies for sale at the shop. But I do say that I myself did not get down any copies for sale."

Another question put to him was whether he had made over any rights in respect of Padyavali to either Thenginakai or Gadigeppa Desai. His answer was:—

"I have not made over to anybody neither Thenginakai nor Gadigeppa Desai or anybody—the right to sell the Padyavali. In fact the idea of making over any such right never occurred to me. It was intended propaganda purposes. It was immaterial for me whether they sold the copies or distributed them free."

187. There are certain other answers which it will not be necessary to summarise at this stage.

188. The first question for consideration before proceeding to examine the various other matters arising in this connection, would be whether and if so to what extent the evidence given by this witness can be accepted or acted upon. In doing so, the fact that he is a person charged with the commission of this corrupt practice by the petitioners and the fact that the petitioners have nevertheless thought it necessary to examine him on their behalf, have to be borne in mind. As already observed by me, a person charged with the commission of a corrupt practice cannot normally be expected to come to court and admit it. From this point of view, there is no difference between Channappagouda Master on the one hand and Pundangouda and Bassangouda on the other. In both the cases, they are charged with the commission of a corrupt practice. In the case of Pundangouda and Bassangouda, the petitioner has also produced one document Ex. P. 44. In the case of Channappagouda Master, however, there are at least three printed documents, the Padyavali and two pamphlets from which the name of the printer was available. Hence it was possible for the petitioners to cite the printers to prove these documents whereas in the case of Ex. P. 44 they had no such advantage.

189. The position both in law and in the matter of value to be attached to the evidence of this character, has been discussed by me at some length in my order refusing permission to the petitioner to cross-examine Channappagouda Master as well as in this order while dealing with the case of bribery.

190. There is no doubt in my mind that in citing these witnesses in the first instance, Channappagouda Master, Pundangouda and Bassangouda, the petitioner was taking a serious risk. Human nature being what it is, he could not expect any one of these witnesses to come to court and admit that he had committed any corrupt practice. If, therefore, with some documents in his hand, which could be proved by other evidence, the petitioner cites a witness of this type, there can be little doubt that he is taking the chance of the witness making certain answers in favour of his case in view of the documents produced in court and otherwise provable. If so, as I have pointed out, he should also take the consequence of the witness making other answers adverse to his case. He has to take the consequences not only because it is a necessary consequence of taking a risk of this type but also because he cannot possibly say that he was unaware of or unmindful of the possibility of the witness making such answers adverse to his case. If with this consequence clearly in his mind, the petitioner puts the witness in the box, elicits some answers in his favour upon matters on which the witness has no alternative but to make an answer in his favour (in view of

the documents) and then seeks permission of the Court to cross-examine him the moment he feels himself free from the documents to make any answers he wishes, the resultant position would be one which cannot but bring about a situation unfair to the respondent. I advisedly used the word "unfair" because from the point of view of accusation, the respondent and these witnesses are placed on a par, both of them being charged with corrupt practice. But whereas a person in the position of a witness may go scotfree avoiding the witness box or simply giving negative answers making it difficult for the court to accept one or the other, the respondents cannot escape the responsibility or consequences of their losing the election in the event of the petitioner making out a case of corrupt practice.

191. Although it cannot be a complete analogy or analogy true in all respect, I think there is something in the rule of burden of proof placed upon the petitioner in the matters of this nature which has some relation to the principles of a criminal trial. For testing most of the propositions of law of evidence in relation to trials of this nature and testing the value of the evidence itself from the point of view of probative effect, the approach is invariably the same as the normal approach made by courts to the evidence in a criminal trial. The strictness of the rules as to burden of proof in criminal trials was till quite recently so severe that an accused could throughout a trial be completely silent and wait until the prosecutor was able to make out a prima facie case against him. It is only in the course of the amendments of the Criminal Procedure Code, effected in the year 1965 following upon the experience of English Courts that a provision was for the first time made enabling the accused himself to give evidence on oath. Till then even the administering of an oath to an accused for an examination was discountenanced by law. Even under the present law, in section 342-A of the Criminal Procedure Code, although an accused is declared to be a competent witness for the defence and may give evidence on oath, he shall not be called as a witness except on his own request in writing and his failure to give evidence is not to be made the subject of any comment by any of the parties or the court or give rise to any presumption against him, or any person charged together with him at the same trial.

192 I had this in mind when I observed earlier that whereas it was open to the respondent in this case to cite and examine Pundangouda or Bassangouda and elicit from them denials on oath of facts alleged against them, the petitioner would have no right to insist upon the respondents examining the said Pundangouda and Bassangouda. The principle, in my opinion, is that whereas the respondents in an election petition or other persons charged with the commission of corrupt practice, have the normal liberty of all persons so charged of giving evidence on oath to exculpate themselves, they cannot be compelled to give evidence by the petitioners themselves citing them as witnesses. The reason why I make this categorical statement of principle is that to hold otherwise would make it possible to say that it is fair under our jurisprudence or administration of justice for one person to charge another person with the commission of an offence or conduct prohibited or discountenanced by law and then compel him to depose on oath whether or not the facts alleged or the charges made against him are true. I cannot think of a more difficult situation which a man may be called upon to meet or deal within a court of law. I do not think that it is open for a litigant to place his opponent in that situation without destroying or seriously jeopardising the principles of a fair or completely fair trial of disputes.

193. Nevertheless, Channappagouda Master having been cited and examined as a witness, it becomes my duty to examine whether and if so how much of his evidence can be accepted.

194 There are, in my opinion three matters in respect of which there could not be possibly any dispute. They are:—

- (i) He himself is the author of the songs as well as the text of the pamphlets Exs. P. 49 and P. 50.
- (ii) He himself had and got them printed.
- (iii) His idea or object in writing or composing the songs and writings these pamphlets was to make them available as election propaganda literature to Congress candidates

195. On these three matters, in my opinion, there cannot be any doubt whatever. He no doubt states that his idea in writing this Padyavali was to make known to the public the high principles of the Congress so that the country may

be benefited. There can be little doubt that he is as human and as much inspired by self-interest as anybody interested in an election. It is not very easy to believe him when he says that he was so imbued with or was completely immersed in the ideas of the Congress as to be wholly unmindful of the candidate or who the candidate was.

196. The question whether Thenginakai of Gadag extended any encouragement to him or made any payment for the printing of 500 copies in his name, is, in my opinion, not relevant to this case. Thenginakai is, according to the evidence, an important person in the civic life of Gadag. I have no evidence before me to hold whether and if so how he may be said to have any interest in the election in the Yelburga constituency.

197. Gadigeppa Desai's name appearing as a publisher on Exs. P. 28 and P. 48 is, however, a matter, which cannot be left out of account, in the same as Thanginakai's name may be.

198. Gadigeppa Desai is admittedly a friend of Agadi Sanganna, or at any rate, a person who is well-disposed towards him. The question is whether and if so, what value there is to the case of the petitioner in associating the name of Gadigeppa Desai with the Padyavali. As appears from the extract from the petition, which I have given, the petitioner describes both Channappagouda Master as well as Gadigeppa Desai as canvassing agents of the respondents. The petition itself does not make mention of the fact that Gadigeppa Desai was shown as the publisher of this Padyavali. At the time the petition was presented, it was not accompanied by the Padyavali and the written statement was filed before the same was produced. Nevertheless, Sanganna in the course of his evidence has stated that he became aware of the fact that Gadigeppa Desai was shown as the publisher of this Padyavali after reading the petition and that he had occasion to see Gadigeppa Desai sometime after the filing of the petition. It may be that he was making a mistake in giving that answer as Mr. Venugopalachari suggested at the end of the cross-examination before commencing the re-examination or it may be that Sanganna was aware of the same or had looked into this Padyavali and the idea at the back of his mind was that his friend Gadigeppa Desai had been shown as the publisher of this book. As either of these positions is not wholly free from doubt, I declined to give permission to Mr. Venugopalachari to put any clarificatory questions in re-examination.

199. Another difficulty created in this regard is that throughout the examination of all the witnesses for the petitioner, definite position was taken up by Sanganna that Gadigeppa Desai was not in Yelburga at all but at Ghataprabha attending on his sick nephew for a period of about 3 months, covering part of December and whole of January and February or beyond. The witnesses for the petitioner could not, of course, of their own knowledge, say "Yes or no" to the suggestion that Gadigeppa Desai's nephew was seriously ill or was being treated at Ghataprabha. Their assertion in cross-examination that they have seen Gadigeppa Desai at certain meetings, however, adds nothing to the value of the chief-examination itself, because the same has to be tested on an examination of other circumstances. But some difficulty is created for Sanganna by the evidence of Tirumalarao, R.W. 3. He deposed that after original contacts between them which arose in the way of his profession he has been a friend of Gadigeppa Desai for a number of years now and that they are on visiting terms. He gave further details and said that he is in the habit of visiting Gadigeppa Desai's house in Mudhol almost every Sunday if not every Sunday. He deposed that when he had gone to Mudhol in December, 1966 one Basvanthrao told him that Gadigeppa Desai had gone to Ghataprabha to attend upon his nephew and that he was expected to return in about 15 days. He went further and said that during January 1967 and February 1967, he had visited Gadigeppa Desai's place at least 3 times each month.

200. On the other hand, the evidence of Sanganna is that he had met Gadigeppa Desai at Ghataprabha during the third week of January and that at that time a surgical operation of his nephew was in contemplation and was expected to be performed towards the end of January or early in February.

201. In the light of these answers in the evidence, it may not be possible to accept the position that Gadigeppa Desai was throughout absent from Yelburga for so long a period as 3 months. The printing of Padyavali was sometime about the middle of January and the possibility of Gadigeppa Desai having been in Mudhol, at that time, cannot be ruled out.

202. The evidence of Channappagouda master that Gangadharayya and some persons in Mudhol, whose names he does not remember collected money enough for printing the book in the name of Gadigeppa Desal is too weak to inspire any confidence. That he is withholding some information is obvious from the fact that though he professes such high respect from Congress principles as to be inspired to write poetry on it, he says that he is not a member of the Congress at all and that collection of subscription as primary member was discontinued about 2 years ago and that he has described himself as a Congress worker without any authority from it. That it cannot be true is obvious from the fact that Siddappa Karandi has included his name in Ex. P. 30.

203. But my difficulty in this case is whether all these matters arouse only suspicion or there is material in evidence to proceed from suspicion to at least an early stage of proof.

204. It is also not sufficient from the point of view of the case of petitioner to prove that Gadigeppa Desal might have with previous knowledge permitted his name to be used by Channappagouda Master for publishing his Padyavali. It is necessary for him to prove that Sanganna had consented to the publication. Whether this matter can be said to have been proved is a question which is not capable of an answer without examining other parts of the evidence in the case.

205. Before doing so, it will be convenient to dispose of at present the legal question whether there is any religious appeal in this booklet.

206. The petition alleges not merely what may be briefly described as religious appeal, but also appeal to religious symbols. The symbol is the picture on the first page of the cover. The religious significance of it is described in the following terms in the relevant paragraph of the petition:

"On the front page a religious symbol has been printed in which the globe of the earth has been shown as Linga with the Panabattala in the middle and the Tripundra at the top, in the middle portion of which the third eye of God Shiva has been shown with the sun and the moon as the other two eyes. The Linga has been shown as emanating from or resting on the sacred 'OM'. Immediately below the Tripundra, Goddess 'Shakti' has been shown. In short everything that is necessary for a sculptural or pictorial or theophanic representation of "Shiva" has been included in this symbol which is the highest and the most sacred diety for the Shaivas and Veerashaivas who form the majority of the population in the Yelburga Constituency."

Now it appears from the evidence that this picture has been in use with Channappagouda Master for a considerable length of time. Ex. R. 15 is a letter written by him while sending the documents to the Court. It is on his letter-head which contains the same picture on the top left-hand corner. It was elicited from him that the Kannada figures '195' were printed at the end of the dotted line for entering the date, and that therefore the letter-head must have been printed very early in the decade commencing 1951. He said that he was using this picture even for a couple of years prior to it. This circumstance shows that the picture is associated more personally with Channappagouda Master than with either the Congress or the members of the Congress. If, as he has deposed, this picture had been prepared by him even prior to 1947-48, it cannot be suggested that it was thought of as a piece of propaganda material for any election. One need not necessarily doubt his answer because in regard to the actual composition of the poems in the padyavali, he has candidly said that he did intend the same to be used for election propaganda by any candidate of the Congress.

207. We have also the evidence that this picture is the same as the picture printed on the first page of Exhibits R. 12 and R. 17, namely, Congress Lavani and Congress Mahatme, two of the publications said to have been made use of for election purpose during the General Elections of 1957. In relation to that picture, a similar contention as the one now raised was put forward by the petitioners Shivamurthy Swami and Sirur Veerabhadrapa in the Election Petitions against Sanganna and Alavandi Shankaregouda which came to this Court in appeal, the former in Miscellaneous Appeal No. 162 of 1959 and the latter in Miscellaneous appeal No. 163 of 1959. The Gazette copy of the judgment in M.A. No. 162 of 1959 is produced as Ex. R. 1 in this case for reference, which is also reported in A.I.R. 1961 MYSORE 106 (SANGAPPA Vs. SHIVAMURTHI SWAMY). The judgment of this Court in M.A. No. 163 of 1959 is reported in A.I.R. 1963 MYSORE at page 81. (SHANKARA GOUDA Vs. SIRUR VEERABHADRAPPA). In those proceedings, the interpretation placed on the picture

by the petitioner was slightly different. The picture of a lady within the outline of India was then said to refer to Bharatha Mata. In the present petition, it is described as Adishakti. The sun and the moon are to-day described as the two eyes of Lord Shiva. In the earlier proceedings, the crescent moon and the star were described as constituting a religious symbol of Muslims. In those proceedings, the description of Gandhi, Nehru and Patel as Brahma, Vishnu and Rudra were pressed as clear material of religious symbolisation of these national leaders,—apparently because there was also a song in the last lavani or mahatma referring to the said fact.

208. In the present petition, the central point of the attack on this question of religious symbol is that this picture is intended to rouse the religious sentiments or feelings of Lingayats by indicating or suggesting that the earth itself is represented as the Linga of Shiva emanating from the sacred letter 'OM'. The burden of the case or religious appeal also is that the section of the voters sought to be moved by appeal to religion was the section consisting of Lingayats who are said to constitute a majority of the electorate in Yelburga Constituency.

209. In both the appeals, 162 and 163 of the 1959, this Court rejected the argument that the picture in question constituted a religious symbol. Mr. Justice Sadasivayya J. dealing with the question at page 87 of A.I.R. 1963 MYSORE, made the following observations :

"It was pointed out that a Crescent and a Star were visible in this picture and that the Crescent and Star are the symbols of the Muslim religion. But, it has to be pointed out that the Crescent and the Star are not shown separately, by themselves; they are shown in a particular setting. The Crescent and the Star as seen in the picture, have got to be taken together with the other items which form their background, in the picture. When the 'Tripundra' and 'Urigannu' also form part of the background, it cannot be said that the Crescent and the Star, in that setting, could properly represent the religious symbols of the Muslims. Similarly, the 'Urigannu' which is shown not as being in the forehead of Eswara but in an entirely different setting, cannot be said to represent any religious symbol of the Hindus. It has not been shown that the picture of the 'Bharata Mata' is the symbol of any religion."

210. The principle indicated by Sadasivayya J. in this case is that one has to look at the entire picture and examine whether it is to any extent recognisable as religious symbol and that it is not open to pick out portions of it and call them symbols appealing to this section or that section of Hindu community.

211. The position was put more emphatically by the decision of this Court in M.A. No. 163 of 1959 wherein it was pointed out that so many ideas and details have been introduced into or suggested by this picture that it is impossible to identify it as any religious symbol or symbol of any religion at all. The Court observed:

"It appears to us to be a preposterous patch-work of unintelligible and fantastic concepts.

I was a party to the Bench which made that observation and I am still of the opinion that whatever may be ideas with which Channappagouda Master, who calls himself a poet, draw this picture, nobody who has any idea of Hindu religion will look upon this as a symbol even remotely related to any ideas of Hindu religion. The fact that he has his own ideas as any one may have about the relation between the Congress principles and those of Buddha, Basava, etc., and whatever may be his notions of geographical distribution of political conceptions, I have no doubt in my mind that this picture is far from anything religious from the point of view of Hindu Religion.

212. I may also cite the observations of the Supreme Court in A.I.R. 1965 SUPREME COURT 669, (RAMANBHAI vs. DABHI AJITKUMAR) wherein it is pointed out that the Hindus venerate various forms of nature, men, animals, trees, or even stones, according to the ideas with which the particular representation is for the time being invested and that it would therefore be quite inaccurate to regard any one of these, a tree or an animal or a stone, as a symbol of Hinduism. In another case reported on page 183 of the same volume A.I.R. 1965 SUPREME COURT, (JAGDEV SINGH vs. PARTAP SINGH), Their Lordships point out that even the sacred and mystic letter 'OM' which is regarded as of highest mystical or spiritual value by all sections of the Hindus cannot be regarded as having been used as a religious symbol if it is printed or painted on pennants or flags used by candidates at Elections as they were in the said case.

213. I, therefore, hold that the picture on the cover page of the padyavali cannot for the above reasons be regarded as a religious symbol.

214. Regarding the text of the songs themselves, the portions that are objected to as constituting religious appeal are 4 stanzas at page 12, 1 stanza at the top of page 13, and 1 stanza at page 16. Stanzas on pages 12 and 13 go together. They read as follows:—

Buddha devana hiri sandesha
 Basava mahatmana vachanupadesha
 "Yesu" helida neethiya nadesuva
 Congress seri-roo durashaya swartha ncegiro
 Mohamad thorida shanthi prakasha
 Gandhi mahatmana satya dhimsa
 Jayamuni dayavanu jagadalli be'esua
 Congress seri-roo matha mathagala eersha kaliyiro.
 Lokmanyara Karmada Yoga
 Mahatmar anasektiya yoga
 Sharanara arpana yogava sagipa
 Congress seri-roo geetaya guttanu ariyiro
 Aruha gurunandarpisi thanuva
 Kuruhe shavanedarpisi manava
 Dhanvanu charippa jangamkarpisi
 Congress seri-roo thyagada haadi thoriroo
 Congress thathvadi janmavu paavana
 Congress thathvadi devana darshana
 Sarva dharmagala saaravu neriha
 Congress seri-roo dharmada thirullanariyiroo.

These 5 stanzas call upon people to join the Congress for the reason stated in those stanzas. Those reasons are that the Congress follows or acts upon the great message of Lord Buddha, the religious teachings or Upadeshas contained in the Vachanas of Basaweshwara and the Neethy or ethics of Jesus Christ, that it attempts to disseminate throughout the world the light of Shanthi or peace shown by Mohammed, the principles of truth and non-violence preached by Mahatma Gandhi, and the great compassion of Maha Veera, that it observes or follows Karmayoga preached by Lokamanya Tilak, Anasakthiyoga preached by Mahatma Gandhi and Arpanayoga followed by Sharnas or followers of Basaweshwara. It also exhorts people to offer or dedicate their body, mind and money to self realisation as if it were Guru, to the Linga as if it were Guru, to the Linga as if it were Shiva himself, and to the Jangamas (Priestly caste of the Lingayats) respectively. 5th Stanza states that life itself will get purified by the Thathwas or principles of the Congress, that the said principles will bring about the vision of God-Devadarshana, and that the Congress embodies the principles of all Dharmas.

215. It is quite true and quite correct to contend that the mere mention of the names of religious leaders may not in all circumstances constitute or amount to religious appeal. The question whether a given document does or does not amount to such an appeal has to be answered upon a fair construction of the entire document taken as a whole. Now the appeal in the above 5 stanzas is to join the Congress and the reason stated therefor as summarised in the 5th stanza is that it embodies the main principles of all Dharmas; the Kannada expression is 'Sarva Dharma Sara' 'Dharma' is a wellknown expression. According to the context it may mean either religion or duty. The present context, having regard to the enumeration of what the poet regards as the essence of all the preaching of the various religious leaders leaves no room for doubt that he meant by the term religion and not mere duty. The use of such terms as 'Sandesha' in connection with preaching of Buddha, 'Upadesha' in connection with the Vachanas of Basava, is clearly indicative of religious merit or value of their teachings rather than mere good conduct.

216. It may be that a reference to peace in connection with Mohammed and truth and non-violence in connection with Mahatma Gandhi may have a purely political or social and not religious significance. It is a perfectly justifiable suggestion that the necessity for absolute rectitude in the conduct of men in charge of public affairs and the eschewing of all violence as a means for the solution of political or social problems are social and political virtues in the context. That appears to be the doctrine of "spiritualisation of politics" preached by Gokhale and also Mahatma Gandhi. To this extent, I do not think that any particular religious significance can be attached to the stanza.

217. But the reference to Karmayoga of Lokamanya Tilak, Anasakthiyoga of Mahatma Gandhi and Arpanayoga of Sharnas, cannot but be religious. The treatise on Karmayoga of Lokamanya Tilak is "Geeta Rahasya" which is a commentary on one of the highly venerated religious books of the Hindus, Anasakthiyoga of Mahatma Gandhi is the name of Gujarati article of his on the same topic and Arpanayoga of Sharnas is clearly the religious ideal of self-surrender to God.

218. The reference to Guru, Shiva and Jangama is without doubt reference to the three great principles venerated by the Lingayats.

219. The general impression created by these 5 stanzas is that Congress is more a religious body than a mere political organisation. I asked Channappa Master when he was in the witness box why he should bring in the names of these religious teachers and their principles in a book of songs written, on his own showing, for election propaganda on behalf of the Congress candidates at the Election. He told me that he was greatly impressed by Mahatma Gandhi's preaching of truth and non-violence and in the course of his further studies he discovered that those principles and the other ideals preached by Mahatma Gandhi were in no sense different from the principles taught by and implicit in the religious teachings of these great men, Buddha, Basava, Jesus Christ, Mohammed and Mahaveera. Only in regard to Mahaveer, he admitted that he had not made any deep study of Jain religion, but in regard to other persons, he has no doubt in his mind that they were great men who have founded separate religious sects.

220. Even so Mr. Venugopalachari argues that the corrupt practice under Section 123(3) cannot be said to have been committed or capable of being committed by the composition and publication of these stanzas. He relies particularly on the language of the Sub-Section as it now stands. The relevant portion of it is:

"(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language....."

He points out that the pronoun 'his' in this extract refers clearly to the candidate for election either the one that commits the corrupt practice or the other whose religion or religious conduct is made the basis of the appeal. By way of direct authority on this proposition, he relies upon the ruling of the Gujarat High Court, reported in A.I.R. 1967 Gujarat page 62, (Lal Singh vs. Vallabhdas particularly on the discussion contained in paragraph 9 of the judgment at page 70 of the report. The Gujarat High Court says that an earlier decision of the Division Bench had already decided that the pronoun 'his' in the sub-section is referable to the candidate and not to the voter. That earlier decision is reported in A.I.R. 1963 Gujarat 315, (Ramanbhai vs. Ajitkumar). The text of the judgment as reported does not contain the particular discussion. Certain portions of the judgment are omitted by the reporter on the ground that those portions deal with discussion of the evidence. It is not clear whether the omitted portions contain this observation. However, it is clear that the Gujarat High Court does observe in the case reported in A.I.R. 1967 Gujarat 62, that the corrupt practice of appeal in the name of religion was committed by an agent of the candidate and not by the candidate and the appeal appears to have had relation to the religion of the agent and not of the candidate. On that ground, the High Court held that the provisions of the Section had not been attracted by the facts of the case.

221. He also relied upon the fact that the Supreme Court in JAGDEV SINGH vs. PRATAP SINGH, 1964 (6) SUPREME COURT REPORTS, 750, has while describing the corrupt practice underlined the pronoun 'his' in the following sentence occurring at the foot of page 769 of the report:

"It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of Section 100 read with Section 123(3)."

222. The argument of Mr. B. S. Patil on behalf of the petitioners in answer to this is that the corrupt practice itself is an appeal for votes, that the appeal is necessarily to voters, and that therefore what is of importance is the voters' religion or religious feelings.

223. While it is true that the corrupt practice of religious appeal being a species of undue influence is necessarily an attempt to move a voter on grounds of religion and that such moving of the voter is possible only if his feelings are moved, and that therefore the religion or the religious feeling of the voter is an essential feature or factor in the corrupt practice, it is not possible to accept the suggestion that the religion or the religious description which can be given to the conduct and practice of a candidate is an irrelevant fact. Because the appeal is for casting of votes in favour of the candidate, one has to take into account both sides of the appeal. It was argued that an appeal to the effect that the opposing candidate is not an orthodox sikh or as a member of the communist party wholly opposed to religion or religious practices, may amount to corrupt practice of religious appeal, and that therefore even the absence of religion or negation of religion by a candidate may in certain circumstances operate to move the religious feelings of a voter, and therefore, constitute the corrupt practice of religious appeal.

224. The answer to this controversy, in my opinion, is contained in the very line of argument pursued by both the learned counsel. The matter relates to the casting of vote. The casting of vote is by one individual in favour of another individual, first being the voter and the second the candidate. Although in actual political life of the country people have organised themselves into political parties subscribing to different policies or ideals for good government of the country, the Representation of the People Act itself deals with individuals as candidates and not the political party. There is also no regular or formal statutory recognition of a political party in the Representation of the People Act, except that in the matter of allotment symbols under the rules, the allotment may be party-wise. Even when a political party puts up a candidate, the party is not seeking election, but the candidate. The organisation of the party or the background furnished to the candidate of the party's organisation and reputation may be of considerable value to him.

225. Secondly, when candidates of political party carry on propaganda, they ordinarily rely not merely on their private or personal merits, but also on the merits of the policies and principles of the party to which they belong. When, therefore, a candidate of a political party appeals to the electorate on the ground that the policies pursued by his party are sound policies and are likely to result in public good, in actual effect what he says is that the policies of his party are good, that the party is committed to implementation of those policies, that as a member of that party and subject to its organisational discipline, he himself as an individual subscribes to those policies and undertakes to implement those policies along with other members of his political party; and that, therefore, the electorate may vote in his favour.

226. Now this padyavali is, on the admission of its author, propaganda literature written specially for election purposes. In the course of his cross-examination by Mr. Venugopalachari, he said that this was written by him a few weeks before it was printed and that except the few stanzas on the cover, all the stanzas in the text itself were composed by him only this year. He has also stated the reason why the entire pamphlet may be regarded as literature for use in elections and the same is that there is a stanza in it on page 16 actually seeking votes in favour of the Congress.

227. On these considerations, it seems to me reasonable to hold that the vote sought in the said stanza is a vote in favour of an individual candidate or different individual candidates on behalf of the Congress, and that any praise of the Congress or its policies is a reason stated in support of that appeal. Further, just as in the case of ordinary political policies, an eulogy of those policies is an undertaking by the candidate to work for those policies. So also the description of the Congress as a highly religious body may well be read as amounting to a statement that Congress is good, because it works for the principles followed by religious teachers, that therefore it works for those principles, and that every member thereof subscribes to those principles and will work for those principles, and that for the said reason votes may be cast in favour of those members standing as candidates at the election.

228. This is reinforced by the stanza on page 16 which is said to constitute a religious appeal by the petitioner. That stanza reads:—

Nasukinali begeddu shuchiyagi mindu Arasnavu kunkumava bhasithavanu
thandu Joddetha poojisutha mathakodiri bandu Janare nama nima-
genu beku?

Joddethigotanu haakuvude beku.

A free translation of that is, "having got up very early in the morning and purifying yourself with a bath, and having worshipped the 'Jodeihu' (a pair of bullocks) with Arasina, Kumkuma and Basitha, come and vote for the pair of bullocks."

229. This stanza was expressly referred to by Channappagouda Master as the stanza asking for votes. In answer to a question on behalf of the petitioner, he said that worshipping the bullocks is not one of the Tathwas of the Congress. There is no doubt that 'Jodeihu' or a pair of bullocks referred to is the election symbol of the Congress. It is this symbol that is referred to in the stanza as the one which should be worshipped. That the worship referred to is not mere veneration which an agriculturist has for the bullocks which are of great value in agricultural economy, is clear from the fact that the worship is asked to be done with Arasina, Kumkuma and Basitha, i.e., the holy termerio power, kumkum and holy ashes.

230. It has been held by this Court in a previous case, between these parties, SHANKARACOUDA vs. SIRUR VEERABHADRAPPA, A.I.R. 1963 MYSORE 81, and SANGAPPA vs. SHIVAMURTHISWAMY, A.I.R. 1961 MYSORE, 106, that though the reference to the pair of bullocks itself or even a very poetic description thereof may not constitute religious appeal, any attempt to equate it with Nandi—the vahana of Lord Shiva would amount to the corrupt practice of religious appeal. In the present case, they are not referred to as Nandi, and on that ground Mr. Venugopalachari argued that the worship or pooja referred to in the above stanza must be regarded as merely typifying the natural respect which as agriculturist has for the bullocks and should not be equated to worship thereof as a representative or a representation of Nandi. The argument is not without force. But in the case on hand, it is difficult to give full effect to it and hold that the stanza does not amount to a religious appeal, for two reasons,—one is that the pooja or the worship is required to be done with Arasina, Kumkuma and Basitha, and secondly it is to be the immediately preceeding step to voting. The voter are asked to worship the two bullocks and immediately to and vote for the said bullocks. The suggestion clearly is that the bullocks in the Congress symbol are objects of religious worship.

231. The next question for consideration would be the questions relating to the alleged consent by the respondents to the publication of this Padyavali.

232. The publication, as I have said, is regarded as consisting of two parts—(1) actual printing and publishing of the book and (2) the distribution of it in the constituency and the oral publication by signing those songs, etc.

233. As is well-established, consent by a candidate sufficient to invalidate his election must be consent to the commission of the corrupt practice. Such consent may be either anterior in point of time or subsequent. In the second case, it is more or less in the nature of ratification or adoption, to prove which the petitioners have to establish first that the perpetration of the corrupt practice came to the knowledge of the successful candidate and that with that knowledge he accepted or condoned the same.

234. By way of previous consent, there is little attempt made to involve Sanganna by that theory except to the extent the petitioners may prove such previous consent by reason of the fact that his friend Cadigeppa Desai happens to be the publisher. One part of that question I have already discussed; the latter has to be postponed to a subsequent stage of the judgment.

235. So far as C. H. Patil is concerned, there is a distinct attempt made by the petitioners to connect him directly with the printing and publication of the Padyavali.

236. In the first instance, P.W. 1 Seshagiri Hombali was examined. As some of his answers made him not quite a competent witness to speak to the documents produced by him, it became necessary for the petitioners to examine his father Sreenivasachar Hombali, which they did later. He was examined later as P.W. 15. Before these persons gave evidence, they had been called upon to produce certain documents in the following terms:—

"Hombali Brothers. Printers, Gadag, to cause to produce the order placed with them by poet Channappagouda Master, Yelburga, to print the booklet, Congress Tatva Prachara, along with the original".

The Press produced the following papers:—

1. A copy of the Padyavali with cover Exhibit. P. 24;
2. A copy of the Padyavali without a cover Exhibit. R-8;
3. Two sheets of manuscript writing Exs. P-26 and P-27; and
4. An Order Book Ex. P-25.

The production of the Order Book was commented upon by Mr. Venugopalachari on the ground that it was not one of the papers called for, nor a paper which may be said to answer the description given in the summons calling for papers. However, as the paper was not entirely irrelevant, it was received reserving liberty to Mr. Venugopalachari to advance such arguments as may be available to him by reason of the said facts.

237. Very early in the course of his examination-in-chief, after marking Padyavali with Cover as Ex. P-24, Seshagiri Hombali deposed to the following facts:—

“Looking at page 275 of Ex. P-25, I say that the order was placed by Channappagouda Master of Yelburga”.

He also deposed that the bill was paid by C. H. Patil. He then said that out of the total of Rs. 200 due, after deducting the amounts already received, there was still a balance of Rs. 75 due. Then followed the following questions and answers in his chief examination:—

“Question: Whose signature is this on page 275?

Answer: It is of C. H. Patil.

Question: Was it made in your presence?

Answer: It was made in my father's presence.

Question: Can you identify his signature?

Answer: No.”

Thereafter he stated that the entire writing on page 275 was his father's and not his.

238. Exs. P-26 and P-27, the manuscript writings, were deposed to as those of Channappagouda Master. In para 10 of his deposition, Seshagiri Hombali deposed:—

“Exs. P-26 and P-27 are among the papers produced by me. Channappagouda Master gave this to me. Ex. P-26 is the specimen of the back cover and Ex. P-27 is the specimen of the front cover of the pamphlet, Ex. P-24, which we were asked to print.”

But in the course of his cross-examination in paragraph 19, he stated—

“At the time Exs. P-26 and P-27 and the instructions represented were given, I was not present”.

In another part of his evidence, he stated that C. H. Patil had first come and given an advance of Rs. 100/- saying that it was in respect of a printing work to be done as instructed by Channappagouda Master who would be coming later. He says that he was present when Rs. 100/- were paid by C. H. Patil but not when Channappagouda Master came to give instructions as expected. He was clear in his answers that the original printed form of page 275 was given to C. H. Patil and also that the printed matter, i.e., padyavali, when completed, was delivered to C. H. Patil.

239. In the course of his re-examination, he said:—

“Ex. R-8 was given along with Ex. P-26 and P-27.”

240. In the course of his examination because he stated that the entire writing on page 275 was that of his father. I stopped further questions to him in regard to that page because, on his own admission, he was incompetent to speak to it. While reading out the transcript to him, he said that because I stopped him, he could not explain fully that though the order was written by his father, he (the witness) himself tore it from the book and gave it to C. H. Patil when the latter had come to the press in the evening

241. I have little doubt in my mind that this witness was not willing to take any care for satisfying himself that what he was stating to the Court was accurate or at least not so violently inaccurate as to be condemned as a falsehood. Very early in the course of his examination-in-chief, he was quite willing to say and very emphatic in stating that certain signature on page 275 of Ex. P-25 was that of C. H. Patil. At the very next breath, he said that he was not present when the signature was affixed to it. The actual Kannada writing which he pointed to as the signature of C. H. Patil reads—

"C. H. Patil Ha Basappa Rampur, Yelburga"

meaning "C. H. Patil by the hand of Basappa Rampur, Yelburga" or "Basappa Rampur, Yelburga, on behalf of C. H. Patil". He was also quite emphatic in stating that the printed material was delivered to C. H. Patil. That even in this regard he had no desire to be accurate in his answers to the Court is clear from his father's evidence as P.W.-15.

242. P.W.-15 Sreenivasachar at more places than one in his evidence stated that Basappa Rampur mentioned above is the name of the person who had come to place the order with him and that the printed material was also delivered to him. He described him as a clerk or head clerk of C. H. Patil. He could not say on his own information whether Basappa Rampur or whoever it was that had come to place the order was the clerk or head clerk of C. H. Patil. All that he says is that the gentleman said so and he believed it. He did not go to Yelburga and verify it.

243. Regarding page 275 of Ex. P-25 which the son said was entirely in the writing of his father, the answers of the father P.W. 15 go to show that there were several portions of it in the writing of his son. That writing on the face of it appears to be a subsequent writing and has no obvious or traceable connection with the original order as taken down by the father. Figures do not tally and the total is wrong. The father says that these writings were made subsequently by his son and that he is not able to speak of them or the matters suggested by them on his own knowledge.

244. Although the father was quite definite and emphatic and appeared to have no doubt whatever on the question that the order was placed by the alleged clerk Rampur Basappa and that the printed matter was also delivered to him, he stated something different in the course of his chief-examination. After stating that Exs. P-24, P-28 and P-48 were printed in his press, he stated in paragraph

"Orders were placed by C. H. Patil. I have known him for about 10 years now."

After stating in para 23 that the total number of copies in the name of Gadigeppa Desai was 1000 and those in the name of Tenkinakai 500, he stated in para 25 that the copies printed as above were delivered to Channappagouda Master.

245. The only writings of Channappagouda Master said to be in the possession of the Press, according to both P. Ws. 1 and 15, are the two manuscript writings Exs P-26 and P-27, the specimen prepared by Channappagouda Master himself for printing the first and the fourth page of the cover. Channappagouda admits that they are in his writing and had been given to Hombali Brothers for printing the cover of the Padyavall. For the rest, the source wherefrom the printers got the text was spoken to in two different ways by the father and son. The son P.W.-1 says that the printed matter without cover Ex. R-8 which is the full text of the Padyavall was not printed at their Press but was given to them by Channappagouda Master along with Exs. P-26 and P-27 as a specimen for printing the Padyavall. He adds that the songs on pages 2 and 3 of the cover were sung by Channappagouda Master directly to the compositor. According to the father, Exs. P-26 and P-27 are the only manuscript portions of the matter intended to be printed and that all the songs from beginning to end were sung by Channappagouda Master and dictated directly to the compositor. He recognised that this was rather an extra-ordinary procedure to follow but was not in a position to give any reason why he made such violent departure from the normal procedure of any printer. He says that Channappagouda Master was with him for nearly four days—two days with him singing the songs to the compositor and two days for completing the printing after correction of the proof by Channappagouda Master. Channappagouda Master himself has a different version to give in the matter. When he was asked where the original text of

the Padyavali was, he stated that he had given it to the printers Hombali Brothers.

246. That P.W.-15 is also a person who is not willing to take any sufficient care before making his answers is clear from some of the answers made by him to the cross-examining counsel Mr. Venugopalachari. He asked him whether his son, who has read up to school final class, knew better English than himself. His answer was:—

"He knows very little of English. I do not know English at all."

He was next given a printed order form in Ex. P-25 and asked if he could read it. His answer was:—

"I do not have sufficient knowledge to understand and explain the meaning".

I told the witness that the question was not if he could explain but whether he could read, whereupon the witness took the paper and read the entire English printed text with the greatest ease. Then another question was put to him:—

"Shall we take it that your son knows more of English than you do?"

His answer was "No, he knows less".

247. I was myself a little surprised how an elderly gentleman could be so careless in making answers in the witness box to a Court.

248. I have little hesitation in rejecting the evidence of both these witnesses as completely valueless. The anxiety of P.W. 1 to dispose of the order was placed by C. H. Patil and point to a signature in Ex. P-25 as that of C. H. Patil even without looking at it, shows that the entire case that C. H. Patil placed the order is without any foundation.

249. The first attempt therefore by the petitioners to establish direct connection between C. H. Patil and the printing and publication of the Padyavali has failed, and the impact of that failure on the other evidence is that the rest of the evidence calls for greater scrutiny than in ordinary circumstances it would have been necessarily subjected to.

250. While on this point, I may also deal with another portion of the evidence of Channappagouda Master. He said that having given the order to Hombali Brothers to print the Padyavali, he went home leaving it to Tenginakal and somebody from Mudhol to go and take delivery of the books. Tenginakal taking delivery of the books may be of some probability, because he is a local gentleman, well known in Gadag, and the Printers are also in Gadag. But, to say that he told P.W.-15 that he could deliver the printed copies in the name of Gadigeppa Desai to any one from Mudhol who may come and claim them is to assume that anything would be believed if stated in a witness box. Assuming that some people from Mudhol might have contributed to the expenses thereof, it is difficult for me to believe that having gone all the way to Gadag to get these booklets printed, Channappagouda Master would cease to take any further interest and instruct P.W.-15 to deliver them to a person whose name even is not known or remembered by Channappagouda Master himself. Apparently, there is some truth in one part of the evidence of Sreenivasacharya that Channappagouda Master was in Gadag until the printing was completed. In all probability his statement in chief examination that the printed copies were delivered to Channappagouda Master himself is a piece of truth which slipped out from his lips without his being aware of it.

251. For proving subsequent adoption or consent by C. H. Patil and also Sanganna, the evidence of the petitioners is almost exclusively evidence of several propaganda meetings said to have been held in Yelburga Constituency. There were four meetings, according to the evidence, in Yelburga town itself, one in Kuknoor, one each in other outlying villages, viz., Yerehanchinahal, Sangannahal, Rajoor and Balootgi. At all these meetings Channappagouda Master is said to have been present singing songs or delivering speeches.

252. In the course of his cross-examination by Mr. Venugopalachari, Channappagouda Master has categorically denied the case of the petitioners that he had sung songs or delivered speeches at any one of those places. He has also denied the allegation that he had gone round in a jeep or done any house-to-house canvassing in Yelburga town.

253. Having regard to the circumstances in which he was examined as a witness, whether or not his denial can be straightaway accepted as true on the merits of his own deposition, one legal effect of this denial, in my opinion, is that the burden of proof lying on the petitioners has become heavier. As already stated, they have taken the risk of doing Channappagouda Master and examining him in the hope that on the strength of certain documents like the Padyavall and other documents, he would be obliged to make some answers in their favour. If so, they must take the consequences of the answers made by him which are adverse to their case. Of course, it is not necessary straightaway to hold on these denials of Channappagouda Master that the entire case of the petitioners regarding the meetings is false. Nevertheless, it makes it necessary to scrutinise the evidence relating to meetings with greater suspicion than otherwise.

254. Out of the meetings, the most important meetings are two,—one held at a place called Usukinakatte in Yelburga town and the other held in Kuknoor. Yelburga and Kuknoor are two of the most important places in the entire Constituency, each with a population of five to six thousand people. The rest of the villages are all smaller villages. The evidence of the petitioners relating to these meetings is also of more witnesses than one. The other village meetings are spoken to by one witness per meeting. In regard to these meetings, there is also the evidence of both the petitioner Sirur Veerabhadrapa P.W.-24 and the Secretary of the L.S.S. Ajjaiahswami as P.W.-13. The importance of these two meetings therefore from the point of view of the case of both the petitioners as well as the respondents is much greater than of the other village meetings.

255. The dates of both these meetings can also be fixed with certainty on the basis of the evidence adduced by the petitioners themselves. P.W.-4 Mallappa Ganigar, who is a witness speaking to all the details of the Usukinakatte meeting, states that it took place on a shandy day about two weeks before polling. Shandy day in Yelburga is Saturday according to all the witnesses. P.W.-24 Sirur Veerabhadrapa also says that the meetings took place two weeks before polling. Ajjaiahswami made a similar statement in his chief examination. We may take it therefore that Usukinakatte meeting, according to the evidence of the petitioners, took place on the evening of Saturday the 4th February, 1967.

256. There is no difficulty in fixing the date of the Kuknoor meeting although there is controversy about the exact time of the day when it was held. Ex. P-34 is a printed invitation relating to the said meeting. It was produced by the petitioners and proved as having been printed at his press by Dattoba Nagoba Saudhagar P.W.-21. The invitation was issued in the name of Talkal Hussainsab, President of the Kuknoor Congress Mandal Committee. According to the evidence of P.W.-21, it was the said Talkal Hussainsab who had placed an order for printing the same. He produced Ex. P-69 as the original manuscript of the text given to him by Talkal Hussainsab. On the first page, the text is written: It is signed by Hussainsab Talkal in Kannada. On the reverse, there is the order to print 50 copies. That order is also signed by Hussainsab Talkal over the date 4th February, 1967. P.W.-21 deposes that these signatures were affixed by Talkal Hussainsab in his presence. We may take it therefore that the card was printed by P. W.-21 on an order placed by Talkal Hussainsab. There is also the evidence of Sanganna's election agent C. H. Hiremat as R.W.-10 to the effect that the said meeting was held on Monday the 6th of February, 1967.

257. Regarding the Usukinakatte meeting, as already stated, the fullest details are spoken to by P.W.-4 Mallappa Ganigar. He belongs to the village of Balootgi and had come to Yelburga that day to attend the shandy. After finishing his work at the shandy, he noticed that the meeting was going on and went over to that place and sat through the proceedings according to his evidence and thereafter returned home. He gives a list of many persons who were present at the meeting. Of them, the first name is that of Channappagouda Master. Paragraph 6 is devoted to the description of Channappagouda Master's performance at the meeting. I will copy the whole of it:—

"6. At the meeting near Usukinakatte, Channappagouda Master stood up first and sang a song in which among other things it was stated that the Congress is like the Ganges. In another song, the Congress was described as having Basavana Swaroopa. He also showed a small book to the audience. There was a picture in that book. He said that the said picture contains the sacred letter "AUM" the Shivalinga, Pana Battala, Vibhooti, the Sun and the Moon, Parameshwara. He also said Parameshwara's vakiana was Nandeshwara. He further stated that the same Nandeshwara had incarnated in Kalyanapatna

and strengthened (Uddara Madida) the Veerashaiva Dharma. He also stated that the same Avatara Purasha Basavanna was no other than the Basava we worship in our houses and that we should vote for the said Basavanna. By Basavanna, we mean the bullock. He added that the Congress follows the Tatva or the principles of Basavanna, that therefore to vote for Congress would be a meritorious act, but to vote for any other symbol, i.e., any other symbol other than the symbol of Bullock would be a sin."

258. As I have said, Sirur Veerabhadrappa and Ajjaiahswami have also spoken about this matter. Sirur, Veerabhadrappa gives a narration covering most of the details deposed to by P.W. 4. According to him, he was then in the L.S.S. Office in Yelburga which is just three shops away from Usukinakatte. This is the description of Channappagouda's speech and singing given by Sirur Veerabhadrappa.

"At that meeting, Channappagouda Master first sang some songs. He sang holding in his hand the Congress Tatva Padyavali. He said that the Tatva or the principles of Congress take in or include the Tatvas of Basavanna, Mohd. Paigambar, Buddha, Jesus Christ and Jainamuni. He then said that Agadi Sangaanna and Chanabasangouda were candidates on behalf of the Congress, that their election symbol was Basavanna and that if people vote for the said symbol, they would acquire merit and have vision of God (Deva darshan)."

Ajjaiahswami is more brief in his summary of Channappagouda's speech. In answer to a question by counsel—"What did Channappagouda Master say in his speech?", Ajjaiahswami stated that "because we had not voted for Basavanna at the previous elections, the Taluk had suffered and that therefore this time votes must be cast only in favour of Basavanna. His speech was throughout in this strain".

259. P.W.-4, as already stated, is a resident of Balootgi village, about 3 or 4 miles away from Yelburga. There was another meeting at Balootgi spoken to by P.W.-2, Lingappa Phimappa Meti. Mallappa himself who gives the details of the Usukinakatte meeting, makes no mention whatever of the Balootgi meeting. Of course, there is a possibility of his not having attended the Balootgi meeting. But that possibility is removed by the evidence of Lingappa Bhimappa Meti. According to him, a few days after the Balootgi meeting, Siruru Veerabhadrappa had come to Balootgi and he had reported to him about the speech of Channappagouda Master. He further deposed that Veerabhadrappa had asked him whether, if occasion arose he would be prepared to narrate these facts. He was asked whether, at the time he had that conversation with Veerabhadrappa, he was alone or there were others also, to which Lingappa Meti replied as follows:—

"The other people who had, as I said, been present on the occasion, also told the same to Veerabhadrappa. The others who did so were Yellappa Meti, Mallappa Ganigar, etc."

260. So far as the details of the speech deposed to by these three witnesses are concerned, it is necessary to recollect that the corrupt practice of religious appeal, according to the petitioners, was in publishing the Padyavali and in certain of the songs therein to which I have already made a reference. Those songs which I have dealt within detail make no reference to the Avatara of Nandi as Basaveswara of Kalyanapatna. The entire narration of the speech by Mallappa is with reference to the idea of this Avatara or incarnation. The Congress, he says, was described as having the Basavana Swaroopa, and Nandishwara is said to have been described as the Vahana or the mount of Parameshwara and that the said Nandishwara incarnated in Kalyanapatna as Basava. These details are wholly beyond the statement of particulars constituting the corrupt practice. The only thing that is within the particulars may be the last portion of his narration namely, that because the Congress follows the principles of Basavanna and others, to vote for the Congress was an act of merit. At any rate, one or two of the stanzas objected to may be interpreted, if one is so minded, in the course of his speech to yield that meaning; for the rest, the description must be held to be clearly beyond the scope of particulars. The same is the position in regard to the brief summary or effect of the speech given by P.W. 13 Ajjaiahswami. Even Sirur Veerabhadrappa as P.W.-24 does not refer to it in the course of his evidence. Veerabhadrappa apparently keeps close to the text of the stanzas described as offending stanzas.

261. P.W.13 Ajjaiah's brief and somewhat casual reference to the speech of Channappagouda Master detracts considerably from the value of his evidence and raises the question whether he was speaking on personal knowledge or merely making a statement in the course of relating the details of the petitioners' case. He has related in the witness box several details touching upon almost every important averment in the petition. To test whether his statements were really in the nature of narration of facts within his knowledge, I asked him whether in relating the names of about nineteen persons as members of what is called the Chunavana Prachara Samithi or Election Propabanda Committee, he was speaking on personal knowledge or only on the basis of inferences drawn by him from the pamphlet Exhibit P-30. He told me that he knew himself that Siddappa Karundi was the Chairman, but not the names of other persons as members of that committee and he was only stating his inferences from Exhibit P-30. Likewise, when he generally stated that the Congress had arranged for several propaganda meetings, he had himself witnessed only two meetings, one at Usukinakatte in Yelburga and other at Kuknoor. These two meetings, as made out by the evidence on behalf of the petitioners, are of some importance. Probably they are, according to the impression created by the evidence on behalf of the petitioner, inaugural meetings or meetings which inaugurated the election propaganda of the Congress party. Having regard to this fact and also to the fact that according to him he had personally witnessed these two meetings, he may ordinarily be expected not to forget the details or to entertain any doubt or confusion about his recollection of those details. But there does appear to be some confusion in his mind about these details. Having said that the Usukinakatte meeting was held about two weeks before polling and having actually looked into Exhibit P-34 in the course of his examination he made in the course of his cross-examination the categorical statement that the Usukinakatte meeting was held subsequent to the meeting at Kuknoor. Secondly, having narrated almost as the first detail in describing the Usukinakatte meeting, the Channappagouda Master distributed the padyavali at that meeting he made the emphatic statement in the course of the cross-examination that what was distributed was the pamphlet Exhibit P-37 and further that the said pamphlet was the only pamphlet distributed at that meeting. Now Exhibit P-37, it will be remembered, is a pamphlet got printed by one K. V. Angadi at Arvind Printing Press of Koppal. I have already referred to the evidence of the printer Kotrappa, P.W. 19, to the effect that the said pamphlet was delivered to his customer K.V. Angadi on the 13th of February, 1967.

262. These circumstances make it difficult to regard Ajjaiah as a witness whose memory or recollection about the details can be fully relied upon. The argument on behalf of the respondents, of course, is that these circumstances actually make it inevitable to draw the conclusion that he could not have been personally present. In either view, it will be difficult to place complete reliance on his evidence.

263. Then there is one another circumstance which renders the entire evidence a little difficult of acceptance. The greatest importance of these meetings from the point of view of the petitioners' case is the part which Channappagouda Master took therein. I have already referred to his evidence showing that he had gone to Koppal to attend the Gavissiddeswara Jatra which commenced on the 28th of January, 1967. He has also spoken to his having drafted the texts of and got printed at Arvind Printing Press of Koppal, two pamphlet Exhibits P-49 and P-50. The printer P.W. 19 Kotrappa has produced his bill book and also spoken to the two bills relating to these pamphlets as well as the signatures of Channappagouda Master thereon. From the said bills, it appears that one of the pamphlets Exhibit P-49 was delivered to him on the 4th of February, 1967, the relevant bill being Exhibit P-60A. One thing that is clear from this evidence, which there is clear from this evidence, which there is hardly any ground to doubt or other evidence to displace, is that Channappagouda Master was surely at Koppal on that day to take delivery of the copies of Exhibit P-49 after the completion of printing. It has no doubt been argued by Mr. Patil for the petitioners that after all the distance between Yelburga and Koppal is about twenty or twenty-one miles and that there is nothing to show that it was quite impossible for Channappagouda Master to take delivery of Exhibit P-49 at Koppal and then proceed to Yelburga in time to attend the Usukinakatte meeting, especially because the meeting according to the evidence commenced at about 3-30 or 4 O'Clock in the afternoon. But the mere fact that it was not, having regard to the distance, quite impossible for Channappagouda Master to attend to both these things is not enough, the question is not one of possibility, but of probability. Even assuming that both the positions are equal probable, the burden being on the petitioner the better or more proper inference to draw would be, that the presence of Channappagouda

Master at Yelburga at the Usukinakatte meeting is so improbable that it cannot be taken as having been satisfactorily established.

264. I will now take up for examination the evidence relating to the next important meeting, namely, the one held in Kuknoor on the 6th of February, 1967.

265. There is considerable evidence relating to this meeting. On behalf of the petitioners besides the petitioner Sirur Vecrabhadrappe as P.W. 24 as well as the Secretary of the L.S.S. as P.W. 13, two other witnesses have been examined, namely, P.W. 8 Dadappa Kalal and P.W. 10 Shivakallappa Harlapur. On behalf of the respondents, two witnesses have been examined, R.W. 3 Thirumala Rao and R.W.10 C.S. Hiremath.

266. In the written statement there was what appeared to be a total denial of even that fact of such a meeting having been held with an alternative statement that if a meeting had been held at all, it was not held either with the knowledge or consent of the respondents. In the course of the evidence, however, it turned out that the respondents no longer disputed the very fact of a meeting having been held, but were interested in providing that the time of the meeting and the details of its proceedings were quite different from the time and the details deposed to by witnesses on behalf of the petitioners.

267. According to the version spoken to by the petitioners' witnesses, the meeting was a grand affair. It started with an impressive procession from Itagi Agasi (the village gate on Itagi side), terminating at the place where a propaganda office of the Congress party was to be opened. The opening ceremony was done, according to them, in the presence of a large gathering of about five to six hundred persons and it is at that gathering that Channappagouda Master sang his songs, made a speech, distributed some copies of his padyavali and other pamphlets. Other important members of the Congress organisation like Shanker Rao Deshpande the President of Taluk Congress Committee, Gururao Desai of Malekopp, C. S. Hiremath are also said to have spoken. C. S. Hiremath was the election agent of Sanganna appointed as such on the 1st of February 1967. He is said to have performed the actual opening ceremony. Gururao Desai, according to the evidence of the petitioners' witnesses, presided over the function. Not only Sanganna and C. H. Patil, but also several other persons are said to have been present at that meeting. The meeting, according to Ajjaiiah, went on till about 11 O'Clock in the night.

268. The version given by Thirumala Rao and C. S. Hiremath, however, is quite different. There was no procession or any large gathering; according to them, it was a simple affair at which not more than eighteen to twenty persons were present. Gururao Desai though invited to preside and expected to come, did not actually come, according to these witnesses. Talkal Hussain, therefore, took the chair and made a short speech. C. S. Hiremath is said to have made a slightly longer speech. But the whole thing was over in less than an hour. According to them, the only important thing done was breaking of a coconut and performing mangalarathi, symbolising the auspicious opening of the office.

269. As already stated, invitation cards were printed at the Dattatreya Printing Press by Talkal Hussain and the text of the invitation is signed by him with his designation given within brackets as the President of Kuknoor Mandal Congress. The function to which invitees were invited is described as 'opening ceremony' (Udhghatana samarambha) of the Congress Propaganda Office in Kuknoor arca (Kuknooru bhagata Congress). (pracharda office). It was elicited from P.W. 21 Dattoba, on behalf of the respondents themselves, that under the order placed by Talkal Hussain, fifty copies of the invitation were printed. The evidence of Thirumala Rao, R.W. 3, is that he received an invitation and that was the reason why he attended the ceremony. It is obvious, therefore, that invitations were sent to places outside Kuknoor also and as the invitation is issued in the name of the President of Mandal Congress, it is unlikely that he would not have sent invitations to his counter-parts in other mandals of the Congress in the constituency. I also do not think it is beyond the pale of probability that the President of the Taluk Congress Committee, namely, Shanker Rao Deshpande also would have been invited.

270. The purpose of the ceremony itself being the opening of a propaganda office, which in the context of the date and the most important political activity of the time, can only mean election propaganda, I find it difficult to accept the version given by the respondents' witnesses that it was a very small affair. The argument was that because invitation cards had been issued, it is reasonable to take the view that it was a function which was expected to be attended only by

invitees or persons to whom cards had actually been sent and that therefore it might well be regarded as a closed-door assembly or meeting. This interpretation is difficult of acceptance because of the circumstances mentioned by me. That the meeting was intended to have some propaganda value from the point of view of the election, is so obvious that it is impossible to take a different view. I have already stated that Kuknoor is one of the two important places in the constituency, probably as important as Yelburga itself. Hence, the value of a meeting having propaganda or advertisement appeal to the voters could not possibly have been lost sight of or ignored or left out of account by persons of importance in the Congress organisation and virtually in charge of the election campaign. If as suggested on behalf of the respondents, only a few congressmen assembled, there would have been no necessity for either Talkal Hussain or C. S. Hiremath to make a speech. It was unnecessary for either of them to canvass the assistance of or persuade the persons assembled to the Congress point of view, because they were already convinced in favour of the Congress. The very admission, that there was a speech by C. S. Hiremath followed by a discussion chalking out the line of propaganda, makes it clear that the meeting must have been attended by persons other than mere workers of the Congress. The suggestion on behalf of the petitioners, therefore, that voters of Kuknoor must have assembled or that an attempt was made to get them to attend the function, appears to me more acceptable than the suggestion of a closed-door meeting of merely the workers of the Congress.

271. But it is not possible to accept the description given by the petitioners' witnesses either. To say that so large a group as five or six hundred persons was present, is to say that the entire Congress organisation or members of the Congress of the constituency must have contributed to the bringing in of so large a crowd. So far as appear from the evidence, Talkal Hussain got only fifty invitation cards printed. On the inference already stated by me, viz., that important persons of the Congress organisation in the constituency might have been invited, the number fifty would have been quite insufficient to go far outside the membership of Congress in the constituency. The clear probability is that because important persons were invited from outside and the function was being organised by the President of the Kuknoor Mandal Congress Committee, attempts must have been made to collect important persons of Kuknoor and as many voters as possible.

272. This however, is not sufficient to dispose of the real points in controversy in relation to this meeting. The meeting would be of little or no value to the case of the petitioner unless he proves the presence, at the meeting, of Sanganna, C. H. Patil, Channappagouda Master and Gururao Desai. As the general pattern of the evidence of the petitioner relating to the several meetings indicates, the case which the petitioner is trying to prove is that at every one of these meetings almost every one of the persons necessary to make out his case of corrupt practice was present. Channappagouda Master, for example, is present at every meeting in Yelburga constituency. Likewise, Sanganna and C. H. Patil and also Pundangouda and Gururao Desai are seen by some of the witnesses in some of the meetings and Gadigeppa Desai in some of the meetings by some witnesses.

273. For the present the point of interest is whether Channappagouda Master was actually present at the meeting and sang songs and made a speech. The presence or otherwise of Sanganna may be a neutral factor from the point of view of both sides, because his election agent C. S. Hiremath was there. The anxiety of the petitioner is clearly to make out the presence of two persons, namely, Channappagouda and Gururao Desai.

274. For each one of the above persons, the petitioner has one document to rely upon, Exhibit P-34 for proving the presence of Gururao Desai and Exhibit P-29 for proving the presence of Channappagouda Master.

275. Before, however, referring to the documents, it is necessary first to see how far the oral evidence on behalf of the petitioner advances his case.

276. Of the four witnesses for the petitioner, the evidence of Sirur Veerabhadrapa, P.W. 24, is limited to the procession said to have started from Itagi Agasi. He has nothing to say about the happenings at the meeting. He says only that Channappagouda Master was one of the persons he saw in that procession.

277. About the meeting itself and the speeches, the evidence is of three witnesses P.W. 8 Dadappa Kalal, P.W. 10 Shivakallappa Harlapur and P.W. 13 Ajjaiah. PW 8 Dadappa Kalal's reference to Channappagouda Master is very brief and is in paragraph 11 of his deposition. He says, that Channappagouda Master with a book in his hand said that the tatwa or principles of Buddha, Christ, Mohammed

and Basavanna are all the same as the tatwa of the Congress and that therefore people should vote in favour of Basavanna.

278. P.W. 10 Shivakallappa gives the following description:—

"Hussain Sah made the welcome speech. Thereafter Shankerrao Manglur made his speech. Thereafter Channappagouda Master made a speech and also sang a song. He explained the meaning of the picture on the book of songs padyavali. Channappagouda Master also distributed copies of the padyavali. He (Channappagouda Master) sang the National Anthem and the meeting terminated. He also distributed a hand-bill or pamphlet containing the signatures of 102 people. The hand-bill resembled the one now shown to me, Exhibit P-30."

P.W. 13 Ajjaiah's description is as follows:—

"After Hussainappa's welcome address, Shangerrao Deshpande made a speech. ***** After him Channappagouda master's speech commenced. He spoke about the Congress Tatwa. He spoke on the same lines as at the Yelburga meeting, referring to Buddha, Mohammed Paigamber, Jaina Thirthankara, Basavanna, etc. He also said that Agadi Sanganna and C. H. Patil are enthusiastic hard working men and that therefore people should vote for them."

279. The first impression that one gets from this description in the evidence is that it is very brief devoid of essential details and is a great contrast to the detailed and graphic account given by P.W. 4 Mallappa of the Usukinakatte meeting. Dadaappa Kalal says practically nothing. Shivakallappa's description is hardly better. Ajjaiah's description is a description by reference to the alleged speech at Usukinakatte. I have already referred to his description of the Usukinakatte speech of Channappagouda Master.

280. The question that arises is why the witnesses are so very brief in their description. It has been argued on behalf of the respondents, that Shivakallappa is not a resident of Kuknoor at all, but of Adur, the native village of Sirur Veerabhadrappe and that Dadappa's presence or residence at Kuknoor is a matter for some doubt, in view of the evidence of his nephew Sanappa Kalal, who has been examined as R.W. 5 and that in all probability neither of them was present at the meeting. The argument about Ajjaiah is that the ignorance or confusion of details or recollection displayed by him in relation to the Usukinakatte meeting is itself sufficient reason to hold that his presence at Kuknoor is quite doubtful.

281. Another argument addressed by Mr. Venugopalachari on behalf of the respondents is that all these witnesses for the petitioner speak of a meeting held in the evening whereas the invitation as originally printed gives the time of the meeting to be 9 O'Clock in the morning. The invitation card Exhibit P-34 produced by the petitioner shows that the time was corrected in manuscript. But the original text given by Talkal Hussain for printing, viz. Exhibit P-69 as well as one of the cards produced by P.W. 21 Dattoba, namely, Exhibit P-70 both show only the original time, namely, 9 a.m. The witness P.W. 21 was asked in the course of cross-examination whether the manuscript correction in Exhibit P-34 had been made by him or in his presence; he said that at the time he delivered the printed cards, the time was printed as 9 O'Clock in the morning and he had not seen the correcting of the same in manuscript to 4 O'Clock in the evening. There is no other evidence in this matter. The person through whom the card Exhibit P-34 was first brought on record was P.W. 10 Shivakallappa. He was not actually one of the invitees. The card was not produced from his custody. The evidence of Ajjaiah P.W. 13 as well as Sirur Veerabhadrappe is that the various pamphlets as well as the copies of came by this collected by their workers and given to them. The person who first came by this card Exhibit P-34 has not given evidence nor has either Ajjaiah or Sirur Veerabhadrappe stated anything about the condition of the card Exhibit P-34 when it first came to his or their hands.

282. It is therefore a matter for doubt, whether the petitioners are right in their case that the meeting was held in the afternoon and not in the morning.

283. Another argument of Mr. Venugopalachari is that the Kuknoor meeting is referred to in the petition not as one of the particulars in relation to the corrupt practice of religious appeal under sub-section (3) of Section 123 of the Representation of the People Act, but as an instance of the respondents taking the assistance of persons in the service of the Government, the particular Government servant referred to being Gururao Desai of Malekop.

284. It appears to me that the doubts raised by Mr. Venugopalachari in regard to the value of the evidence adduced by the petitioner are not doubts which can be lightly brushed aside. There is no doubt some difficulty created by the total denial of the meeting itself or at any rate their knowledge of the meeting by both the respondents. The argument by Mr. B. S. Patil is that it is impossible to believe Sanganna, much less C. H. Patil, when he says that he was totally unaware of this meeting. He says that being persons of importance in the Congress organisation in Yelburga and being themselves candidates at the election on behalf of the Congress, it is highly unlikely the these two persons would not have become aware of it. In any event C. H. Patil must have been invited, according to the argument of Mr. B. S. Patil. He therefore, argues that the very fact that the respondents tried to ignore the meeting or pretend ignorance thereof shows that they are trying to hide something which may be utilised as evidence against them in proof of the case of corrupt practice.

285. The argument raises the question of presence of Sanganna and C.H. Patil at the meeting at Kuknoor. As I have already stated, because C. H. Hiremath's presence at the meeting is admitted, the question whether Sanganna was or was not present at the meeting loses importance. But because the argument has been very strongly pressed and Mr. Patil has insisted that it is impossible to believe that these candidates would not have been present, I shall deal with it briefly.

286. If as I have already held the meeting was one of importance from the point of view of election propaganda and the central figures in that propaganda would undoubtedly be Sanganna and C. H. Patil, candidates on behalf of the Congress, the probabilities, in my opinion, are, had they been present, the opening ceremony would have been performed by one or the other of them and not by C. S. Hiremath. Mr. Patil has argued that Hiremath was selected because he was a member of the priestly caste and that his participation in the ceremony would add importance to the religious appeal. I find it difficult to accept the argument, because in an election propaganda meeting, the candidate would certainly be more important than any priest who may be present and if indeed Sanganna was there, he would be the most important person present. Firstly, he is the candidate for the Parliamentary constituency. Secondly, he is the President of the District Congress Committee. Thirdly, he is one of the persons for whose benefit the propaganda is being put on foot.

287. It is remarkable that none of the witnesses for the petitioner, who as I have already said, have not hesitated to exaggerate the importance to a great extent of the meeting in question, has made any mention of any speech delivered either by Sanganna or C.H. Patil. The emphasis is all on Channappagouda Master. Whatever may be the importance of Channappagouda Master from the point of view of the petitioners' case of religious appeal, it is difficult for me to believe that he would have been permitted to put the candidates themselves in the background or eclipse them by his songs or speeches.

288. I, therefore, think that the presence of Sanganna and C.H. Patil at the meeting has not been satisfactorily proved by the evidence on behalf of the petitioners.

289. From what is stated above, it would appear that the presence of Channappagouda Master is also a matter for considerable doubt. The only circumstance which, Mr. Patil said, would make his presence probable is that he was a Congress worker who has been named as one of the important persons in Exhibit P-30 by no less a person than Siddappa Karandi, the President of the Yelburga Congress Mandal Committee. If that is all he could say in support of his case of Channappagouda Master's presence there, I should say that it is a very weak probability.

290. But what exposes the case of the petitioners to further doubt and suspicion is their attempt to build a case on the basis of Exhibit P-29.

291. Exhibit P-29 purports to be a report of the proceedings of this meeting by a person describing himself as a wanderer without giving his name. It contains two pages of printed matter. But the name of the printer is not found on it. There is no proof, even formally, of the printing of this pamphlet.

292. The original of the pamphlet is not before the Court. Argument pressed by Mr. Patil before me is that having regard to certain facts or certain steps taken up by the petitioners to get the original produced there is a case for receiving Ex-P-29 as secondary evidence.

293. The legal position can be briefly disposed of before going into facts. Reliance is placed by Mr. Patil on section 65 of the Evidence Act, particularly

clauses (1) and (c) thereof. The relevant portion of section relied upon by Mr. Patil is the following:—

“(65) Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power of any person legally bound to produce it,

(b) * * * *

(c) When the original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own fault or neglect, produce it in reasonable time.....

His argument is that a witness summoned to produce a document comes within the description of a person legally bound to produce a document and secondly that the petitioners having taken all steps they could, to get the document produced are not, for any reason arising out of their default or neglect in a position to produce the original within reasonable time

294. I do not doubt that a witness would come within the description of a person legally bound to produce a document. Regarding the party himself tendering evidence referred to in clause (c), the document in question need not necessarily be a document in his custody. It may be either in the custody of somebody else and within his power or not within his power to produce without the assistance of the Court. The position in law is found discussed in *GAYA PRASAD v. JASWANT RAI*, (A.I.R. 1930 Allahabad P. 550) and in *VENKATARAMANUJA-CHARYULU v. APPLACHARYULU* (A.I.R. 1926 Madras P. 1003). The English case of *THE QUEEN against THE INHABITANTS OF KENILWORTH*, (195 English Reports 631) has also been relied upon.

295. The general proposition made in these cases is that when the existence of an original is made out but the party tendering evidence is not in a position to produce the same, it need not be insisted upon that the proof of the circumstances entitling him to produce secondary evidence should be absolutely strict or on the basis of strictly legal evidence. The position is stated by COLERIDGE, J. in the case of *KENILWORTH* mentioned above in the following terms:—

“If the precise rules of evidence were applicable, the objections might perhaps be well-founded, objections to receiving secondary evidence). But that is not so. The preliminary proof is given to enable a judicial tribunal to determine whether secondary evidence can be submitted to them. In such a case a looser rule of evidence may prevail.”

His Lordship Demman C. J. in the same case points out:—

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“The question in every case is, whether there has been evidence enough to satisfy the Court before which the trial is had that a bonafide and diligent search was made for the instrument where it was likely to be found”

296. The first question of fact in the case is whether the petitioners prove that there is an original document, and if so, who has the custody of it. The second question is whether he has made every bonafide attempt to have the original produced before court

297. The petitioner got summons issued to two persons in relation to this document: One to Channappagouda Master and the other to the Manager of Dathathreya Press, Kuknoor. In the summons issued to Channappagouda Master, he was asked to produce among others copy of his report entitled “kuknurinalli Congress Officina Udghatana Samarambha and subscribed by him as “Orva Sancharigala Waradi-Inda’. In the summons issued to Dattatreya Press, the document is found described in the following text:—

“Order placed for printing pamphlet entitled Kukanurinalli Congress Officina Udghatana Samarambha along with original of it”.

298. Channappagouda Master in his evidence said that he was not in a position to produce this document, because it was not one of the documents published by him. The person who is the proprietor of the Dattatreya Press, namely Dattoba, P.W. 21, did not produce the document.

299. Sirur Veerabhadrapa gave the following evidence about this document :—

"The pamphlet, Exhibit P. 39 produced on our behalf was secured by the said Ajjah and our workers in Kuknoor including Virabhadralah."

Q. Did you make any enquiries about the printing of this pamphlet?

A. Yes, I made enquiries with Dattoba Nagoba (P.W. 21) of the Dattatreya Press, Kuknoor. He told me that the Pamphlet was printed in his press but that he had been asked not to print the names of the press or anybody by Agadi Sanganna, Channabasangouda, Talkal Hussain Sab, Channappagouda Master."

300. On these facts, Mr. Patil argues that the original must be either with Channappagouda Master or with the printer P.W. 21 that he had taken steps to get the original produced by causing summonses to be issued to these witnesses and both of them have failed to do so. He further argues that in the circumstances of this case both these persons are favourably disposed towards the respondent or at any rate not favourably disposed towards the petitioner and that therefore it is not possible for him to cause production of the original without taking special steps and without therefore unreasonable delay.

301. The argument on behalf of the respondents is that Ex. P. 29 is a suspicious document, because it does not contain the printer's name. The case is that the respondents suspect that Sirur Veerabhadrapa himself must have got this document printed somewhere and produced the same into court for the purpose of building a case against the respondents.

302. It appears to me that both sides have merely put suggestions and theories to the witnesses and to the court. The fact that the respondents suspect Sirur Veerabhadrapa of printing this is of little value to the court from the point of view of determining the truth or otherwise of the relevant fact alleged. But the evidence of Sirur Veerabhadrapa about this document which I have already extracted, is equally unhelpful. He says that P.W. 21 Dattoba himself had told him that the pamphlet was printed by him at the instance of the four persons mentioned above and that he deliberately omitted to mention his name or the names of anyone of those persons under the instructions of the said persons. The argument of Mr. Patil is that although the statement which Dattoba Nagoba is said to have made to Sirur Veerabhadrapa may in ordinary circumstance be regarded as hear-say evidence, if Sirur Veerabhadrapa is believed, the circumstance may be of use to him to support his prayer for producing secondary evidence. He relies on the cases cited above to show that a court need not be very strict in regard to the proof of preliminary conditions necessary for enabling a party to produce secondary evidence.

303. If that was all that was to be said in this matter, there would not be any difficulty in admitting the document as secondary evidence. But there are certain weighty circumstances which appear to me to mitigate against the case of the petitioners that they are entitled to have this document produced by way of secondary evidence.

304. The steps which they say they have taken to get the original produced are the issuing of summonses to Channappagouda Master and to the Dattatreya Press, Kuknoor, for production of document. The wording of the summons addressed to the former suggests that he was the author of the entire document purporting to be a report of the proceedings of the Kuknoor meeting. The wording of the summons issued to Dattatreya Press would make it appear that the original of the printed text in Ex. P. 29 is with that press. Both Channappagouda Master as well as Dattatreya have been examined as witnesses.

305. The former has categorically stated that the said document was not a publication by him and he is not in a position to produce it. He has stated not merely in the course of his oral evidence but also in his letter addressed to the Registrar of the Court while sending other documents called for from him, namely, Ex. R. 15. No questions were put to him either to discredit his assertion or to place on record circumstances which might detract from the value of his answers.

306. Dattoba P.W. 21 was not asked any question about this document. He did give considerable room for suspicion by his producing only one document Ex. P. 60 and by his answers as to the person who is said to have read the English text on the summons of this court and interpreted the same to him and also drafted his letter addressed to the Registrar of this Court accompanying the document. The reasons stated by Mr. Patil for not putting any question to

him in regard to this matter is that the same would have been objected to on the ground that it was in the nature of the cross-examination. I do not agree. There is no difficulty in putting that question, because when the petitioner called upon this witness to produce certain papers he was proceeding upon the assumption that the papers were in possession of the said person and there would be nothing wrong or nothing objectionable or open to objection by the other side for the petitioner to ask the witness for purpose of eliciting the information whether a particular document called for from him was or was not in his possession or to ask him to state to the Court the reasons why he has omitted to produce one or the other of the documents required by the Court. Further if what Sirur Veerabhadrappe says is true, the witness P.W. 21 is being charged by him with either deliberately wrong conduct or negligent conduct in ignorance of the provisions of law. In either event, it was only fair that P.W. 21 should have had an opportunity to state his part of the case.

307. It appears to me, therefore, that the only case of the petitioner that the original of this document is either with Channappagouda Master or with Dattatreya Press is not shown to be true or is not made out. It may be that the petitioner believed either one or the other of these two persons had the original or believed that Channappagouda Master was himself the author of the same. That belief itself might be wrong or based upon a mistaken impression. Hence, the fact that the original exists or the fact that such an original must be either with Channappagouda Master or the Kuknoor Press are both facts which are not shown to be true or established.

308. I cannot therefore proceed on the basis that an original exists and that the petitioners have taken all possible bonafide steps necessary to cause its production.

309. I therefore, decline permission to the petitioners to produce Ex. P. 29 by way of secondary evidence.

310. As the only piece of documentary evidence strongly relied upon by the petitioners to establish the presence of Channappagouda Master at Kuknoor meeting is thus unavailable to them and as the oral evidence relating to the meeting already analysed by me is too weak and open to doubts, I hold that the petitioners have failed to prove the presence of Channappagouda Master at that meeting.

311. The other meetings of Yelburga constituency in order of time are the following:—

- (1) A meeting at Basari Katti in Yelburga held 10 to 12 days before poll, i.e. between 7th and 9th of February, 1967. This is spoken to by P.W. 5 Tippanna.
- (2) A meeting at Yere-Hanchinahal. This is spoken to by P.W. 6 Annadanappa. He says that it was held 10—20 days before the poll. Although time so given leaves wide margin, it is possible from other answers by him to fix a narrower margin. He says, for example, that 8 or 10 days before poll, Jeenina Veerappa came to him with a request on behalf of L.S.S. to act as their Polling Agent. He adds, by that time the meeting referred to by him had already taken place. The possibility, therefore, is that this meeting must have been held on the 8th, 9th or 10th of February. The time given by the witness is 12 noon to 1 p.m.
- (3) A meeting at Sanganhah is spoken to by P.W. 12 Karabasappa. This meeting took place, according to him, about 8 or 10 days before poll, that is, between 9th and 11th of February. Time was 9-30 a.m.
- (4) A meeting at Rajur spoken to by P.W. 7 Neelappa. This also took place about 8 or 10 days before the poll between 9th and 11th of February. Time was 3 p.m.
- (5) A meeting at Balutgi spoken to by Lingappa Bhimappa Meti, P.W. 2. This took place about 7 or 8 days before poll, i.e. on the 11th or 12th of February. Time was 4 to 6 p.m.
- (6) A meeting at Basava temple in Yelburga spoken to by P.W. 11 Bassanagouda. It took place 5 or 6 days before the poll. But the evidence is that it was held on a Monday. That fixes the date on 13th of February. This took place in afternoon at about 3 p.m.

(7) A meeting at Panduranga temple in Yelburga town. This is spoken to by P.W. 12 Karabasappa. According to him, this took place 4 or 5 days before the poll i.e. 14th or 15th of February, at about 9-30 in the morning.

312. At all these meetings, they say Channappagouda Master was present and either sang songs from Padyavali or made speeches on more or less the same line as are spoken to in the case of Usukina Katti and Kuknoor meetings. At all these meetings, according to the witnesses, C. H. Patil was present. Agadi Sanganna was present at all the meetings except the meeting near the Panduranga Temple. His name is not mentioned as one of the persons present by P.W. 12.

313. All these meetings, as already stated, are to establish the connection between Channappagouda's activities and the respondents. No meeting will be of any value to the case of the petitioner unless Channappagouda Master and the respondents are present at the same time.

314. It will be useful, therefore, from this point of view to examine on the evidence adduced by the petitioners the position as to where Agadi Sanganna and C. H. Patil were on these several days. The period, it will be remembered, is from 7th of February to the 15th of February.

315. There is first the evidence of Sanganna to the effect that he had accompanied the Chief Minister on a tour of the Raichur District. The tour programme is found in Ex. P. 7 produced by the Tahsildar, Gangavathi, which is a document marked by consent. According to the said programme, the Chief Minister was expected to arrive at Raichur at 12-30 p.m., address a public meeting at 3 p.m.; leave Raichur at about 4 p.m.; address public meetings at Manvi, Sindhnur and Gangavathi en-route and arrive at Munirabad for a halt at 11-30 p.m. It is not sought to be disputed that the Chief Minister did tour the area on that day, although of course, it is not impossible that he may not have kept closely to the schedule on account of exigencies of travel. As the Chief Minister belongs to the Congress Party and he was admittedly touring for propaganda purposes for the benefit of Congress-candidates at the Election and as Sanganna was not only the parliamentary candidate but also President of the District Congress Committee of Raichur, there is no reason to disbelieve him when he says that he met the Chief Minister and accompanied him on his tour. The timings show that Sanganna must have left fairly early in the morning from Koppal to be in Raichur in time to meet the Chief Minister and spend rest of the day and half of the night at least in his company.

316. It is a matter of admission on the part of Sanganna and a matter spoken to by a witness on behalf of the petitioner, namely, Gavisiddiah, P.W. 14, that there was a meeting of the merchants of Koppal at the place of one Manickchand Mehta. It is also a matter of admission and proof that after that meeting, a pamphlet was issued by Manickchand Ex. P. 47. That pamphlet shows that the said meeting was held on the 10th of February, 1967.

317. Another witness examined for the petitioner, namely, Murthuza Saheb, P.W. 17, speaks to Sanganna addressing a meeting at a locality called "madivalapana Masidi" in Koppal. Sanganna admits having addressed a meeting in that locality. He does not, however, give the date of that meeting. According to Murthuza Saheb that meeting was held five days before the poll. That would be the 14th of February. Murthuza Saheb further says that next day (15th of February), he had occasion to go to Bochenahalli, 16 or 17 miles from Koppal to see a patient of his, Rudrayya who was reported to be very ill. His evidence is that "The person who had come to call me said that Shekarappagouda of Bochenahalli had come in a jeep, that the same was returning to Bochenahalli and that therefore, I might travel in the said jeep." Describing his journey in that jeep, the witness says that there was another jeep in which Sanganna and others were travelling, that both the jeeps passed through Sindhogi, Katharki, Thigari and reached Bochenahalli at about 2 o'clock in the afternoon. At Bochenahalli, while the witness was attending on his patient, Sanganna and others were engaged in house to house canvassing in Bochenahalli. The witness does not know when Sanganna returned, because he himself, for his return journey, took bus from Alavandi.

318. Then we have three witnesses speaking to the three meetings held in Kushtagi constituency.

319. One of them, Malleshgouda P.W. 27 speaks of a meeting at Talawageri, 5 or 6 days before poll in the afternoon at about 3-30 or 4 p.m. At that meeting

according to the witness, Agadi Sanganna as well as C. H. Patil were present. The other two witnesses, P.Ws. 25 Kantha Rao of Kushtagi town and P.W. 26 Ramaro of Bichgal village speak respectively to a meeting at Kushtagi at 7 P.M. and a meeting at Bichgal at 9 P.M. addressed by the Minister, Mr. S. R. Kanti, at which both Sanganna and C. H. Patil were present. Bichgal is about 4 miles from Kushtagi. Kantharao gives the date of the Kushtagi meeting to be 14th or 15th. In the context of events, it appears probable that the two meetings spoken to by these witnesses, P.Ws. 25 and 26, were held on the same day, the party proceeding after the Kushtagi meeting to the neighbouring village, Bichgal.

320. At the meeting at Talavageri, the presence of Minister is not spoken of. The day was 5 or 6 days before the poll.

321. From this summary it would appear that the meetings spoken of by P.Ws. 25, 26 and 27 were held during the period 13th, 14th and 15th of February.

322. From these dates appearing from the evidence of petitioner's own witnesses and Agadi Sanganna accompanying the Chief Minister, following inferences flow :— On the 7th of February, it is impossible that Agadi Sanganna would have been anywhere in Yelburga constituency because the whole of that day and most of the night must have been taken up by journey to Raichur and then journey with the Chief Minister upto Hospet. On the 10th of February, when the meeting at Manikchand's place was held, it is not possible to say that he attended any meeting in Yelburga, at any rate in the forenoon. It is the evidence of Gavisiddiah that the meeting at Manikchand's place took place between 10 and 11 in the morning.

323. On the evidence of Murthuza Saheb, it would appear that Sanganna was in Koppal constituency itself on the 14th and 15th. We have no idea of the time when the meeting at Madivalappana Masidi was held. Hence it is not possible even to argue that having addressed a meeting at Madivalappana Masidi in Koppal, Sanganna went to Yelburga constituency to address some other meeting or having finished that meeting in Yelburga constituency he came back to Koppal to address Madivalappana Masidi meeting. On the 15th, the following day, Murthuza Saheb's evidence makes it impossible to place Sanganna anywhere outside Koppal constituency, because from morning right upto 2 P.M. he must be either in Koppal or travelling upto Bochenahalli via Sindhogi, Katharki etc. The witness is clear that they were at Bochenahalli at 2 P.M. and sometime thereafter was spent by Sanganna in house to house canvassing. It is unlikely therefore he would be available at other places to address a meeting or even attend it.

324. During the same period, 14th and 15th, the evidence of Kantharao and Ramarao P.Ws. 25 and 26, places Sanganna in Kushtagi. The evidence of Malleshagouda P.W. 27 places him also in Kushtagi on the 13th afternoon, because the meeting at Tavalgeri which is also about 4 miles from Kushtagi took place, according to this witness, sometime in the afternoon at 3-30 or 4 P.M.

325. At all these meetings in Kushtagi C. H. Patil is also said to be present by P.Ws. 25, 26 and 27. If so, he also becomes unavailable for meetings in Yelburga constituency.

326. Then there are two other matters arising out of the evidence relating to the meetings in Yelburga. P.W. 11 Basangouda who speaks about the meeting at Basavanna temple in Yelburga also speaks to the distribution of some election literature. I have already said that on the evidence of this witness, date of this meeting can be fixed as Monday the 13th of February, and the time to be 3-00 P.M. Among the pamphlets distributed at the meeting as narrated by this witness is the pamphlet Ex. P. 37. That pamphlet, as I have already said is the pamphlets printed by P.W. 19 for one K. V. Angadi and delivered to him that very day the 13th of February 1967, at Koppal.

327. P.W. 12 Karabasappa speaking of the meeting at the Panduranga temple in Yelburga, says that the said temple is situated in Brahmins street. As the God Panduranga is Vishnu, it is probable that the devotees are Vishnavite Brahmins. It is, therefore, a little difficult to believe that Channappagouda Master would have gone and lectured to them on the principles of Lingayat faith or that the Vishnavite Brahmins would have heard him with any patience.

328. Finally there is another circumstance. The Gavisiddheshwara Jatra at Koppal occupied about 13 days from 28th of January till the 9th of February. From Ex. P. 60-A, dated 4th February 1967 it appears that Channappagouda Master, who had gone for the Jatra, was in Koppal till then. There is no evidence as

to when he got back, nor is there any evidence to show which days of the Jatra are more important from the point of view of devotees.

329. There is however the evidence of two witnesses P.W. 3 Lingappa Gurappa Harti of weavers' lane, Yelburga and P.W. 16 Siddanagouda of Ganigaravoni, Yelburga, to the effect that Channappagouda Master began going about in the streets singing songs accompanied by some boys and doing house to house canvassing from about eight or ten days before the poll and continued to do so till about two days before the poll. That period will be the period from about the 9th or 11th of February to 16th or 17th of February.

330. The evidence of Sanganna is that he did not go to Yelburga Constituency at all during the entire election period, but that he was concentrating all his efforts in Hospet, Hadagali and Mundargi.

331. The evidence of C. H. Patil is that between the 1st and the 10th of February, he was touring in a jeep Hirevonkalakunte and Mangalore areas and was not either in Yelburga town or Kuknoor or the western portion of the Yelburga town. He states that he had finished touring those areas during January itself, that he had gone to Kuknoor thrice during January before the 31st, and that therefore he started paying attention to the eastern part of the Constituency comprising the circles of Hirevonkalakunte and Mangalore.

332. It is the evidence of both Sanganna as well as C. H. Patil that no regular meetings at all were held of the type spoken to by the petitioners' witnesses, and that their general method of propaganda was for either themselves or for their workers to contact the local leaders and get the local leaders to do more intensive campaign within their localities. C. H. Patil is more specific in giving details. He had divided the Constituency for the purpose of propaganda and campaign into five circles and constituted some of the members or office-bearers of the Congress as his principal workers or supporters to look after his local propaganda. In Hirevonkalakunte he had one Dr. Basavantayya a member of the Taluk Development Board. In Mangalore he had Sripalagouda—the president of the Taluk Development Board. The said Sripalagouda was later appointed his election agent. In Yelburga town he had Basappa Ladi as his principal supporter and worker. In Kuknoor circle Talkal Hussain and Channappa Hokkalath, the former a member of the Village Panchayat and the latter a member of the Taluk Development Board, were helping him. Talkal Hussain as already stated, is the president of the Congress Mandal Committee of Kuknoor. In Talkal circle one Kotrappa Gadigi and Shankarappa Yerasi—a member of the Taluk Development Board, were assisting him.

333. This evidence of the respondents has been severely criticised by Mr. Patil to be quite artificial and unacceptable. He points out that during the General Elections of 1962, the L.S.S. candidates succeeded in the Assembly Constituencies of Yelburga as well as Kustagi, and that therefore the probabilities are all in favour of the view that the Congress and its candidates including Sanganna must have concentrated all their attention on these two Constituencies or at any rate given greater attention to the propaganda in these two Constituencies rather than Constituencies like Hadagali, Hospet and Mundargi, as spoken to by Sanganna. Further it is pointed out that even according to the evidence of Sanganna he had not only supporters, but also relatives of his working for him in the constituencies of Hospet, Hadagali and Mundargi. He also says that even if one assumes that he paid some extra attention to the said three Constituencies, it is impossible to believe that he would not have stepped into Yelburga Constituency at all throughout the election period. It is further pointed out that meetings are one of the well-known methods of conducting election propaganda and that therefore when Sanganna and C. H. Patil say that they held no meetings at all in Yelburga Constituency, they should not be believed.

334. On the other side Mr. Venugopalachari points out that the argument of Mr. Patil summarised above is really in the nature of a surmise. It is not as if that propaganda can be carried on only by holding meetings or addressing meetings. Indeed, he says that it may well be taken that the outlook of the voters at present is such that meetings and lectures are hardly likely to have any clearly persuasive effect on their choice of candidates, and that actual personal house to house canvassing is a more persuasive and more effective type of election propaganda. In this view he states that the mode of propaganda organised by C. H. Patil by having important persons in each Mandal or area to work for him must be regarded as a more probable state of affairs. The evidence of C. H. Patil is that he himself toured the western half of Yelburga Constituency

during the period 13th to 31st of January and devoted the next 10 days to touring the eastern portions of the Constituencies like Hirevonkalakunte and Mangalore areas. There is not, according to the argument, any reason why this evidence should not be accepted, nor has anything intrinsically improbable in that way of working pointed out by or on behalf of the petitioner. He adds that according to the petitioners' own evidence Shivamurthyswami toured Yelburga Constituency only on two occasions in the company of Sirur Veerabhadrapa. According to the details deposed by both of them, the first tour was completed probably or in all probability before the 4th of February. During that tour, according to the evidence of Sirur Veerabhadrapa, Shivamurthyswami along with him toured Yelburga taluk only during one day. The second tour of Shivamurthyswami in Yelburga was even according to him some time towards the end of the 2nd week of February. During that tour, Sirur Veerabhadrapa says that they were together in Yelburga only for two days. According to the evidence of both the petitioners as well as the Secretary of the L.S.S., Ajjalah, there were altogether just 4 or 5 meetings held by or on behalf of the L.S.S. Giving details of these meetings, Ajjalah says one meeting in Yelburga town was held about 20 days before the poll, that is to say, either late in January or very early in February, and one meeting at Talkal and one at Kuknoor 8 or 10 days before polling with a difference of a day or two between them. It is not as if that Shivamurthyswami and Sirur Veerabhadrapa were less interested in getting elected than Sanganna and C. H. Patil were. If they felt satisfied with only two such short tours and just 3 or 4 meetings, there is no reason for them to argue that the Congress candidates must have held as many as ten meetings in Yelburga taluk within a short period of as many days.

335. I have collected these outstanding features about the meetings in Yelburga taluk held according to the evidence of the petitioner between the 7th and 15th of February, and briefly summarised the principal arguments addressed by the learned counsel on both sides on this aspect of the case for the reason that the case in regard to these matters or case sought to be built by the evidence relating to these meetings, is not one on which any reasonably satisfactory conclusion can be arrived at by me on an examination in isolation of the evidence of each one of the witnesses speaking to the several meetings. In the case of all meetings between the 7th and the 15th of February, there is only one witness speaking to one meeting. One of them P.W. 12 Karabasappa has given evidence relating to two meetings. With very few exceptions, most of these witnesses are admittedly workers or polling agents of the L.S.S. or its candidates. To take the evidence of each witness and try to discover whether he is speaking the truth or the whole truth or not, is, in my opinion, a very difficult if not an impossible task. After all the point at issue is whether and if so how many meetings were held either by Congress or by L.S.S. The principal point for examination under this topic is whether the alleged corrupt practice of religious appeal and to have been committed by Channappagouda Master was one so committed with the consent of the respondents. The entire structure of the evidence relating to these meetings is directed towards connecting the respondents with the activities of Channappagouda Master by showing or trying to show that both the respondents were present and listened without any objection the appeals made by Channappagouda Master on grounds of religion either by singing songs from his padyavali or by making speeches purporting to explain the songs with a view to convey a religious appeal to the voters.

336. It will be seen that the main point of the attempt or the central point of the attempt in the evidence on behalf of the petitioners on this part of the case is to place Channappagouda Master as well as both the respondents together at each meeting. Unless the petitioners succeed in proving that at any one of the meetings all these three persons were together, their attempt cannot succeed. Hence, whether or not Sanganna is speaking truth when he says that he never went to Yelburga taluk and whether or not he and C. H. Patil are speaking truth when they say that no meetings were at all held, any opinion by me on the said two questions is insufficient to support any definite conclusion on the question whether at any one of the meetings spoken to by the several witnesses on behalf of the petitioner, they too were present when Channappagouda Master sang his songs or made a speech.

327. In the light of what is stated above, the only satisfactory way in which I can deal with this part of the evidence is to examine the broad probabilities in the case in the light of the circumstances and considerations suggested by the petitioners' evidence and by examining how the picture sought to be created by the evidence compares with the case as originally set out in the petition.

338. It is, as Mr. B. S. Patil suggests, not very easy to accept the suggestion that Sanganna never went to Yelburga taluk. The only question will be whether he did or did not go to Yelburga taluk during this period of 7th to 15th of February. It may also be not quite in accord with the facts to assert that no meetings were at all held. At the same time, it is necessary that either Sanganna or C. H. Patil or both of them should be present at every meeting, and a meeting, as Mr. B. S. Patil points out, need not necessarily be a well organised pre-arranged affair. In election propaganda, by broadcasting cinema music, singing or making other attempts to attract the attention of the public, people might be collected and the propagandist take advantage of the gathering to treat them to a propaganda speech. In fact that is the impression I got from the description given by C. H. Patil of the meetings said to have been held by or on behalf of the L.S.S. The exact Kannada expression used by him was "Mandi koodisu-thiddaru. Sabhe maduvudu gothilla".

339. Taking that much as probable or within the range of normal probabilities, we have, as already stated, the following indisputable circumstances. On the 7th of February Sanganna's presence anywhere in Yelburga taluk may be taken as fairly impossible. His evidence is that on that day he was in the company of the Chief Minister touring from Raichur to Hospet. On the 10th of February as well as on the 13th, 14th and 15th of February, the probabilities suggested by petitioner's own evidence make it very doubtful whether he would have at all gone to Yelburga Taluk. It has no doubt been argued by Mr. B. S. Patil that those were hectic days of election propaganda, that candidates were using fast moving vehicles like cars or jeeps and that it is not impossible that they would be running from place to place. But, it appears to me if the candidates or their workers were running from place to place when the polling day was approaching, the probabilities are more in favour of their trying to contact the local leaders or establish personal contacts with as many important voters as possible rather than spend hours at collecting people and lecturing to them. Petitioner's own evidence which I have already referred to also places C. H. Patil away in Kustagi on 13th, 14th and 15th of February.

340. C. H. Patil's evidence that having toured the western half of the Constituency, he was away in the eastern parts from 1st to the 10th of February, is not contradicted except by the evidence of other witnesses who say that they have seen him attending several of the meetings at different places in Yelburga Constituency. If as I have already said the probabilities are more in favour of establishing local contacts or contracts with as many locally important persons as possible, I do not see why I should totally reject his evidence especially when under a close cross-examination he has given several details including the number of villages in the Constituency and the number of villages he was covering day by day. In any event, his denial on oath of his presence at any one of the meetings makes the burden of proof resting on the petitioner a little heavier than otherwise.

341. Regarding Channappagouda Master himself, on a detailed examination of the evidence relating to the meetings at Usukinakatte and Kuknoor, I have found it difficult to accept the case of the petitioner that he was there at these meetings singing or making speeches. At the rest of the meetings, the position has to be examined from the point of view of the exact manner in which his propensities or capacity could be made use of for strengthening election propaganda. According to the case sought to be made out by the petitioners themselves, his only utility was the religious appeal sought to be conveyed by either his songs or by explaining what is described as the religious significance of the picture on the cover of the padyavali. I have already held that the picture cannot be regarded as religious symbol. But, I should now record that the evidence of some of the witnesses that he explained the picture at meetings, even meetings at crowded places like Usukinakatte and Kuknoor, does not accord with probabilities. The picture is a very small one in size and is so complicated and full of details that explanation of the picture to a person other than the one sitting or standing next to the person explaining, is almost impossible. To say that he explained this small picture to a large gathering of 50, 100 or 200 persons is to say a thing which cannot be readily accepted. Secondly, singing of songs by themselves may not mean much from the point of view of propaganda unless they are explained or are so sung as to make every word distinctly heard. That would take such a lot of time that unless the entire time of the meeting is taken up by Channappagouda Master himself, he would not be an effective propagandist at all.

342. In the petition although meetings are mentioned, the general impression given of the effective way of working adopted by Channappagouda Master was that having been provided with a jeep by the respondents, he was touring villages and singing songs through a loud-speaker, attached to the jeep, and that within Yelburga town he went walking the streets accompanied by boys singing these songs and also did house to house canvassing. But, when we come to the evidence, the picture is almost exclusively of meetings at which he is said to have sung his songs, explained the picture or made speeches. To the extent the evidence gives the impression that he spoke of the theory of Nandi incarnating himself as Basaweshwara, of the reasons for the failure of rains after the previous elections, etc., it goes for outside the scope of particulars.

343. On the activities actually emphasised in the petition, travelling about in jeep is spoken to by only one witness P.W. 22 Neelappa, who says that about 10 or 12 days before polling, Channappagouda Master had come to his village Thondihal in a jeep and that he sang some songs with a book in his hands through a loud-speaker. He adds that Channappagouda Master said that principles of Basaweshwara were the same as those of Buddha and Christ and that Basava means Basaweshwara of Kalyana and also that all the incarnations of Basaweshwara are the same. This theory of Avatars is beyond the particulars. The only other witnesses who refer to his going about in a jeep are Ajjalaiah and Sirur Veerabhadrappa. They were cross-examined about the details of the jeep. Naturally they could not give any particulars. They could only say that they had seen this gentleman going about in a jeep. On the other hand, there is the denial by both Sanganna and C. H. Patil.

344. Regarding street walking and house to house canvassing, we have two witnesses, P.W. 3 Lingappa Gurappa Harti and P.W. 16 Siddanagouda. The general effect of their evidence is the same viz., that he started doing so some 8 or 10 days before the poll and went on doing so till about 2 days before the poll, and that he used to do so on alternate days, and also that he visited the house of these witnesses twice. Sirur Veerabhadrappa says that he has seen Channappagouda Master going about in the streets of Yelburga. According to him he used to do so once in two or three days. Ajjalaiah's statement is general in nature and not capable of being regarded as evidence of any specific character. If it is possible to believe, and it does not appear to be entirely improbable,—that Channappagouda Master was in Koppal for most of the time when Gavisiddeswara Jatra was going on, it is not improbable that he returned at about the time or shortly before the commencement of the period of his street walking, as spoken to by P.Ws. 3 and 16. Even otherwise, his coming earlier need not necessarily lead to the conclusion either that he started street walking and singing earlier or that his services were utilised for singing at meetings.

345. The overall picture created by all this evidence and considerations arising out of it, is in my opinion, that in all probability Channappagouda Master must have done some house to house canvassing and street singing in Yelburga town, that some meetings, though not numerous as spoken to by the petitioners' witnesses, might have been held by the Congress Party or Congress Workers, that it is not wholly improbable that at some of these meetings he might have sung, but that the evidence of the petitioners is not sufficient to lead to a definite conclusion that at the meetings at which Channappagouda Master might have sung either Sanganna or C. H. Patil was definitely present, and that the said evidence is quite insufficient to show that he must have gone about in a jeep touring the villages outside Yelburga town.

346. If the evidence is insufficient to hold that Sanganna or C. H. Patil or both of them was or were present at any meeting at which Channappagouda Master might have sung his songs, then the one important link on which the petitioners depend to prove that the corrupt practice committed by Channappagouda Master had their consent, snaps.

347. So far as actual street singing is concerned, there is no case nor do the witnesses who speak to it P.Ws. 3 and 16 make any mention of the fact that the same was done in the presense of either Sanganna or C. H. Patil.

348. The petitioners are, therefore, obliged to prove consent on other material, if any, available. It is here that Mr. B. S. Patil made strenuous attempt to prove that the documents that are proved and such of the evidence as is clearly acceptable is sufficient to suggest that there must have been consent, at any rate, conduct amount to subsequent adoption or ratification on the part of at least C. H. Patil.

349. The argument is through or on the strength of the pamphlets Exhibits P. 49, P. 50 and P. 30 and the printing of the name of C. H. Patil at the foot of page 16 of the padyavali Exhibits P. 28 and P. 48.

350. So far as Exhibits P. 49 and P. 50 are concerned, there is the evidence of Channappagouda Master himself that he is the author of the entire text in both and in the printed text there are no errors or departures from his original composition. These two pamphlets are admittedly election literature seeking votes in favour of the Congress candidates named therein. Channappagouda Master has actually composed one or two couplets in which he has included the names of Agadi Sanganna and Virupakshagouda the Congress candidate for the Koppal Assembly Constituency. He has also added a foot-note or set of instructions to the effect that in other Constituencies, the names of the respective Congress candidates may be substituted and the couplets sung. One of the names mentioned by him is Channabasavagouda, i.e., the respondent C. H. Patil. There is no doubt that he knew that C. H. Patil was the Congress candidate in Yelburga Constituency. He has described himself in these pamphlets as 'Congress Karyakartha', that is to say Congress worker. Although he denied the suggestion that such description indicated any official connection between him and the Congress, the denial is not readily acceptable for two reasons. In the first place he has exhibited great attachment to what he calls the ideals of the Congress and utilised the talent that he possesses for composing songs on them. Secondly, his name is printed among the 102 residents of Yelburga appealing for votes in favour of the Congress Candidates in Ex. P. 30. C. H. Patil has admitted that Ex. P. 30 was got printed and published by Siddappa Karandi, who is the President of Yelburga Mandal Congress Committee. He has also admitted that the Secretary of that Mandal who has included himself as one of the persons seeking votes under Ex. P. 30 is Basappa Ladi. The said Basappa Ladi was the person who was working for C. H. Patil in Yelburga town. C. H. Patil has also candidly admitted that he depended upon both Siddappa Karandi and Basappa Ladi for assistance in election propaganda and accepted their assistance. Channappagouda Master having admitted that the Padyavali was a piece of election literature specially written or composed for the General Elections of 1967, the printing of the name of C. H. Patil on the 16th page thereof is, according to Mr. B. S. Patil, the clearest indication of the fact that C. H. Patil must have had something to do with the printing of the same.

351. That Ex. P. 30 may be depended upon to hold that Channappagouda Master was a member of the Congress or a Congress worker, appears to be fairly clear from the events. But the attempt to prove that he was a regular member of what is called the 'Prachara Samithi' on the part of P.W. 3 Ajjaiah could not succeed because he had to admit that the only piece of information he could state on his personal knowledge was that Siddappa Karandi was the Chairman of it. The evidence of the printer Mudbasappa, P. W. 20, was that Siddappa Karandi, who personally gave him the original of Ex. P. 30 in manuscript, viz., Ex. P. 63, had told him that the several names appearing on the said manuscript document Ex. P. 63 were not signatures of those persons. Karandi himself not having given evidence, this statement by Mudbasappa may be regarded as hearsay. But his evidence that the said document does not contain the writing of Siddappa Karandi, is direct evidence. What emerges from this is that Ex. P. 63 which is proved to have been signed by Siddappa Karandi was probably not written by himself and there is no evidence to show either that the names appearing on that document are signatures of the persons bearing those names or to show that Siddappa Karandi or anybody else on his behalf and sought and obtained the permission of these several persons to have their names printed. All that one could say on the evidence of C. H. Patil that Siddappa Karandi is not a person to publish what he knows to be false, is that the persons named therein were sympathisers of the Congress and were willing to ask people to vote for the Congress; technically they may be canvassers. To say that out of these 102 persons, the most important person is Channappagouda Master, is, I think, an exaggeration. From the mere fact that the President of the Congress Mandal at Yelburga is responsible for the publication, there is no reason to think that any one person is more important than the other in the said list. I asked Mr. Patil a specific question whether so far as the printing of the name of C. H. Patil at page 16 of the padyavali is concerned, he was suggesting that any responsibility is traceable to Siddappa Karandi. Mr. Patil told me frankly that he is not making any such suggestion nor is there any evidence to support it. His argument was that he was depending upon Ex. P. 30 only to show that Channappagouda Master was a man of some status in the propaganda machine of the Congress, and that so far as the printing of the name of C. H. Patil on the padyavali is concerned, he wanted

me to infer that Channappagouda Master was undoubtedly interested in C. H. Patil as a candidate, that such interest cannot be one-sided, but could only be mutual, and that therefore it is possible to infer that the printing of his name was within the knowledge of C. H. Patil, if not the result of actual consent by him.

352. I can accept the argument that Channappagouda Master was perhaps himself responsible for printing that name and may, therefore, be taken as interested in C. H. Patil as a Congress candidate for election. His denial that this was printed without his knowledge and did not impress me. In answer to my questions, he has expressly stated that though he was of the opinion that the election symbol was more important than the name of the candidate, he had no objection whatever to himself using the name of the candidates in the songs composed by him or permitting others to include the names of Congress candidates in the songs composed by him. He also stated that if only he had been asked by somebody to put the name of C. H. Patil in the padyavali, he would have had no objection. If his evidence that Gangadharaiiah and others of Mudhol gave encouragement to print the copies of padyavali showing Gadigeppa Desai as publisher can be accepted, then it would mean that whoever they were, who made such a request were persons interested in Congress election propaganda and might have or may be reasonably expected to have requested him to print the name of C. H. Patil in the same way as his un-named friends of Koppal got him to compose songs with the names of Agadi Sanganna and Virupakshagouda included in them.

353. But the next step in the argument that C. H. Patil must necessarily be held to have consented to it, is a more difficult step to take on the evidence and the probabilities suggested by the evidence. The difficulty is created by the fact that Channappagouda Master having been cited by the petitioners, while admitting his authorship of the padyavali and the pamphlets Exhibits P. 49 and P. 50, has expressly denied the truth of every one of the other items of activity attributed to him in the petition. He has denied his presence at meetings. He has denied street walking. He has denied any contact with any of the Congress candidates. As already stated by me, the denial may be a matter for scrutiny before one could accept it as absolutely true. I have already come to the conclusion that this total denial is not clearly acceptable and that he must have done some street walking and singing and house to house canvassing. But his denial in the witness box, having been cited by the petitioner himself, has certainly made the burden of proof heavier so far as the petitioner is concerned. If he wants to take the benefit of the answers made by him admitting his authorship of these pieces of election literature, he cannot get rid of the adverse replies given by him without leading strong evidence to the contrary. If the entire evidence of Channappagouda Master is to be kept out of account as that of a person who in the circumstances cannot be trusted to speak the truth or speak the whole truth before the Court, the case of the petitioner becomes weaker by depriving him of the benefit of the favourable answers given by Channappagouda Master.

354. In those circumstances, the only proper view that I can take without being apprehensive of being unjust or unfair to either of the parties or to the witnesses is that he must be taken to have admitted facts which are true to his knowledge and denied facts which are not true to his knowledge, but, with this difference viz., that he might be credited with a desire to expulgate himself from adverse criticism or from a charge of actual corrupt practice.

355. Considering all these aspects of the matter, it appears to me that the petitioners cannot, on the basis of the above documents—Exs. P. 30 P. 49 and P-50 alone or on the basis of the said documents and such other suggestions as may be available to them on other evidence, contend that there is any foundation for the suggestion that C. H. Patil himself must have consented to the printing of his name on the sixteenth page of the padyavali. The further difficulty in the way of the petitioners to make any such suggestion is the total unreliability of the evidence of P.Ws. 1 and 15, Seshagiri Hombali and Sreenivasacharya Hombali.

356. My opinion is that the petitioners have failed to prove any sort of consent on the part of C. H. Patil to any of the activities of Channappagouda Master.

357. On this aspect of the case, there remains only one further point of examination, and that is, whether any such consent may be traced to Sanganna through Gadigeppa Desai.

358. As I have earlier stated, it may not be possible to accept as completely true the case that Gadigeppa Desai was absent or away from the Yelburga Constituency throughout the election. He might have been present during some portions of the said period. There is the evidence of Channappagouda Master to the effect that he had not sought either the previous consent or subsequent approval of Gadigeppa Desai for printing his name as publisher. It is not possible to accept this position at its face value. His reference to Gangadhariah and the statement that he asked Hombali Brothers to deliver all the printed copies to whoever may come from Mudhol to claim them, as I have already held, are not readily acceptable. The probabilities are that he himself must have taken delivery of all the copies and brought them to Yelburga.

359. In the petition, Gadigeppa Desai is expressly referred to in the very paragraph in which the corrupt practice of religious appeal is mentioned without, however, indicating that he was the publisher or that his name has been printed as the publisher of the Padyavali. The respondents could not therefore clearly traverse this aspect of the case. While calling for papers from the Printers Hombali Brothers and from Channappagouda Master himself, the petitioners have called from the former the order placed by Channappagouda Master to print the Padyavali and from the latter a copy of the Padyavali showing Gadigeppa Desai as the publisher. The copy produced by the printers Ex. P. 24 shows one K. C. Tenginakai as the publisher. There is no case associating the said Tenginakai with the allegation with which we are concerned in these petitions.

360. While referring to meetings at which Channappagouda Master is said to have sung his songs, no reference was made to the presence of either the respondents or of Gadigeppa Desai at any one of those meetings. But the evidence throughout makes an attempt to speak to the presence of Gadigeppa Desai at three or four meetings at least.

361. Even in the evidence, there is no case of any direct knowledge on the part of Sanganna of the fact that his friend Gadigeppa Desai's name has been printed as publishers of the Padyavali. Channappagouda Master having stated that he had never contacted Gadigeppa Desai, the only attempt is to connect the three—Channappagouda, Gadigeppa Desai and Sanganna,—through the evidence relating to meetings. The said evidence I have found insufficient to come to a definite conclusion as to the truth or otherwise of the various statements regarding the presence of different persons at those meetings.

362. In view of this, I have no alternative but to hold that the evidence adduced by the petitioners is insufficient to suggest, much less infer, that Channappagouda took the permission of Gadigeppa Desai to print his name as publisher and that Sanganna had knowledge of it or joined with Gadigeppa Desai to get Channappagouda Master to print this Padyavali for use as a propaganda literature.

363. Lastly, there is one argument strongly pressed by Mr. Patil on the strength of an answer given by C. H. Patil.

364. In paragraph 58 of his deposition, while speaking to his tour in Hirivankalakunte, Manglur etc., in a jeep equipped with loud-speaker, he stated:

"The recorded cinema songs were broadcast and wherever people assembled, I sought votes in favour of "Jodettu" or Basavanna".

Immediately, I asked him the question

"What do you mean by Basavanna?".

His answer was:

"The bull is called Basavanna (Ethige basavanna unthare)".

365. On the basis of the above answer, the argument strongly pressed by Mr. B. S. Patil is that here is an admission of a corrupt practice by the respondent himself and that even though there is no allegation or statement of particulars in the petition charging C. H. Patil himself with having committed the corrupt practice of religious appeal, the admission is sufficient to hold him guilty of a corrupt practice and that in the interest of purity of elections, the Court should take notice of it and deal with the matter in accordance with the law.

366. Two cases have been cited in support of this proposition, viz., (1) Raghunath Singh v. Kampta Prasad Saxena 8 E.L.R. 424, and (2) Narasimhan v. Natesan Chettiar 20 E.L.R.1. In the latter case, the admission of the

respondent which was the subject of discussion was not an admission of corrupt practice but admission of certain facts having a bearing on the corrupt practice of incurring election expenses in excess of the prescribed maximum. The proposition of law laid down by the Madras High Court was that assuming that the Election Tribunal could come to a finding that a corrupt practice had been committed on facts not alleged in the petition but admitted by the respondent, it is well settled that the admission of the respondent must be taken as a whole.

367. The case of Raghunath Singh (8 E.L.R. 424) was decided by an Election Tribunal and the admission made by the respondent in that case was of his having engaged a species of Government Servants called Zamindars as his polling agents. The Tribunal held that although corrupt practices must generally be pleaded and proved by the petitioner, if a corrupt practice comes to the notice of the Tribunal from the admission of the respondent, the Tribunal is bound in the interest of justice to take notice of it.

368. The first question for consideration therefore is whether the answers given above amount to an admission of a corrupt practice. The argument is that to use the word "Basavanna" to refer to the election symbol of the Congress is to suggest to the voters that the pair of bullocks in the said symbol represented Basaveshwara the Great Veerasaiva Reformer. The answer is that it need not necessarily be so. It is argued that not only C. H. Patil's answer to my question but also answers given by some of the petitioners' witnesses go to show that the Kannada expression "Basavanna" is also commonly used to refer to an ordinary bullock and that the said expression need not necessarily be regarded as amounting to a suggestion that the Congress election symbol represents Basavanna or Basaveshwara of Kalyana.

369. One of the witnesses for the petitioners is Thiappa Parasappa Uppar P.W. 5 who stated in the course of his cross-examination in para 14 as follows:—

"I have two bullocks at home. They are of great importance or value from the point of view of cultivation and agriculture. The bullocks are called Basavanna."

Another witness Murtuza P.W. 17 who is a Muslim stated in his examination in chief in para 10 as follows:—

"I am a Muslim. Muslims also join Hindus in some poojas and processions of bullocks or Basavanna on such occasions as Kar-Hunnime, Basava Jayanthi, etc."

370. There is therefore evidence to show that the expression Basavanna may also have an innocent meaning, that is to say, meaning other than the one the use or employment of which may imply a reference to Basaveshwara of Kalyana.

371. Before a person can be held to an admission, the whole of the admission as well as the circumstances which might explain its meaning should also be taken into account, especially when on the strength of such admission he is proposed to be held guilty of a corrupt practice. In the case reported in 20 E. L. R. 1, the admission was quite clear in terms *viz.* that certain Zamindars had been employed by the successful candidate as his polling agents. That Zamindars were persons in the service of Government procuring or obtaining whose assistance is a corrupt practice was a point of law which had already been decided by the Tribunal as appears from its judgment. Hence, the simple admission by the respondent of having employed such persons as his polling agents was itself sufficient to complete the case of corrupt practice. In the present case, however, the admission may be described as equivocal or at any rate not quite so clear as in itself to amount to a corrupt practice with nothing more remaining to be proved to complete the case of corrupt practice.

372. I do not think, therefore, that on the facts of this case, it is possible to apply the principle of law relied upon by Mr. Patil.

373. My findings, therefore, on issues 4 and 5 in Election Petition 3 of 1967 and issues 8 and 9 in Election Petition 6 of 1967 which are in identical terms, are the following:—

"It is proved that Channappagouda Master of Yelburga had printed and published in the Yelburga Constituency during the election period a book-let called the Congress Satya Prachara Padyavali. The petitioners, however, have failed to prove that the publication was made with the consent of either Agadi Sanganna or C. H. Patil or of the

election agent of either of them. The petitioners have failed to prove that the said Channappagouda Master acted as an agent of either Agadi Sanganna or C. H. Patil for the purpose of election. The facts proved by the petitioners establish that some of the stanzas in the Padyavali amount to a corrupt practice within the meaning of sub-section (3) of Section 123, but do not establish that the corrupt practice was committed either by Agadi Sanganna or C. H. Patil, or by Channappagouda Master with the consent of either Sanganna or C. H. Patil or of the election agent of either of them so as to invalidate the election of either Sanganna or C. H. Patil.

374. The next topic is the corrupt practice of obtaining or procuring the assistance of persons in the service of the Government, covered by issue Nos. 7 and 8 in Election Petition 3 of 1967 and issues Nos. 6(b) and (c) and 7 in Election Petition 6 of 1967.

375. In view of my findings already recorded on issue No. 6 in Election Petition 3 of 1967 and issue No. 6(a) in Election Petition 6 of 1967, the only person who comes within the ambit of clause (f) of sub-section (7) of Section 123 of the Representation of the People Act is Pundangouda, the police patel of Halkeri.

376. The allegations in regard to him in the petition in Election Petition 6 of 1967 are contained in paragraph III(F) (4). They are:—

“Pundangouda, Police Patel of Halkeri above named is the officiating Police Patil of Halkeri village in the Taluka of Ron. He went round in the company of Respondent No. 1 and Hasangouda, Mulki Patil of Halkeri and canvassed votes for Respondent No. 1. He has also moved round in the Constituency of Yelburga, with the consent of Respondent No. 1 and canvassed votes for him throughout the period available for canvassing votes in the village of Rajpur, Sanganal, Thondihal, Bhandihal, Kuknoor, Yalburga etc. Thus the assistance of Pundangouda has been taken by Respondent No. 1 for the prospects of Respondent No. 1's election in the matter of canvassing votes for him. This assistance was taken for canvassing votes for Snri Agadi Sanganna also.

The said Respondent No. 1 i.e., the Congress Candidate for the Yelburga Constituency and Agadi Sanganna, the Congress candidate for the House of the People, from the Koppal Parliamentary Constituency made common cause with each other and have acted as each other's agent, as well as in the matter of these canvassing agents, besides themselves available to each other.”

377. The allegation in the petition in Election Petition 3 of 1967 are similar and to the same effect. The only difference is, whereas in the case of C. H. Patil, it stated that Pundangouda moved about the Constituency in his company, in the case of Sanganna the express statement made is that Pundangouda had canvassed with the consent of Sanganna and his election agents. The averment as to both Sanganna and C. H. Patil having made common cause and helped each other in the election is made in Election Petition 3 of 1967 also.

378. The case, it will be seen, is that of direct contact between Pundangouda and C. H. Patil, whereas Sanganna is sought to be made responsible on the ground that having regard to the line of propaganda pursued by the Congress and its candidates, Sanganna actually entrusted the responsibility of propaganda for him into the hands of C. H. Patil so far as Yelburga Constituency is concerned.

379. There are two distinct attempts in the evidence for establishing direct contact between Pundangouda on the one hand and C. H. Patil on the other.

380. The first of them is the case of corrupt practice of bribery, the details of the evidence relating to which I have examined and expressed the view that the case of bribery is not satisfactory made out.

381. The second attempt is the one made through the evidence of Kotrappa Kallappa Mosamani, P.W.9.

382. The said Hosamani is a resident of Adur village but owning considerable agricultural land both in Adur as well as in the neighbouring village of Rajur. He deposed that about eight or ten days before polling he was sent for by Dattappa Desai, the Gumasta Patwari of Rajur village, through a Walikar of Rajur village. When he went to the house of Dattappa Desai, he says, he found sitting there

Gururao Desai, Pundangouda, Agadi Sanganna, Channabasannagouda, Channappagouda and others. Pundangouda then told him that the villagers should vote for Agadi Sanganna and C.H. Patil. Gururao Desai (who is the Pattedar Patwari of Rajur and who had appointed Dattappa Desai as his gumasta) told the witness that because he Gururao Desai—was the Shanbogue of the village, all the villagers should vote for Agadi Sanganna and Patil. He was then given some copies of the padyavali and of pamphlets Exhibits P-29, P-30, and P-31 and requested to distribute them in Adur village.

383. The witness adds that both his wife as well as his son's wife belong to Halkeri; that he visits Halkeri fairly frequently and that he and Pundangouda are friends. He also says that they are on visiting terms.

384. The main question for consideration about the evidence of this witness is whether it is at all probable that he would have been selected by Congress candidates or Congress workers for distribution of their election literature. Rajur and Adur are neighbouring villages, the distance between them is only about one and a half mile; they are included in the same village panchayat with its office at Rajur. At Rajur, the Congress had its own workers, one of whom Devareddyappa has given evidence as R.W. 9. P.W. 7 Neelappa at the rate of Lingappa of Rajur village has also said that in his village Devareddy, Mannapur Sangappa, Gurukar Sharnappa and Kuberappahad worked for Sanganna. R.W. 9 Devareddyappa also gives the names of the above persons, as persons who were working with him for the Congress.

385. The greater probability of this work or work of this character being entrusted by Congress candidates to their own workers is not rejected or taken as non-existent by Mr. Patil, learned counsel for the petitioners. But he says that the special reason why P.W. 9 Hosamani was sent for was the fact that he was a friend of Pundangouda and Pundangouda himself had come to Rajur as spoken to by him. With respect, it appears to me, that this would be reversing the process of reasoning. The question at issue is whether Pundangouda was there to work for C. H. Patil or Agadi Sanganna or both of them and the evidence adduced to prove that fact is that of P.W. 9 Hosamani. For testing the acceptability of the said evidence, the fact sought to be proved by it cannot be assumed to be true.

386. I am, therefore, not satisfied that there was any special or compelling reason why in spite of the fact of there being as many as four persons working for the Congress in this village, P.W. 9 Hosamani's service should have been intended upon. Probabilities in my view are all against the suggestion of the petitioners that his witness was actually selected for distributing election literature by the Congress.

387. It is no doubt true that he appears to be a substantial agriculturist owning extensive lands both in Adur and Rajur and may, therefore, not be open to the criticism that he is a mere worker of the L.S.S. Nevertheless the probabilities discussed above make it difficult to act on his evidence to prove or even probabilise the case of the petitioners that Pundangouda had actually come to Rajur to secure the assistance of this witness.

388. There is no other evidence of this character showing or tending to show any direct connection between Pundangouda and C. H. Patil in the matter of the conduct of election propaganda.

389. For the rest, the evidence is entirely that of the propaganda meeting which I have discussed in detail under the topic of the corrupt practice on religious appeal.

390. The meeting at Usukinakatte and the details of the meeting at Kuknoor cannot be said to have been satisfactorily established so as to prove the presence of any of the persons important to the case of the petitioner. The nature of the evidence in regard to Pundangouda on this part of the case is that except in the case of the meeting at Usukinakatte at which, according to P.W. 4 Mallappa Gangir, he is said to have supported or commended the ideas propounded by Channappagouda Master, at all other meeting all that he is reported as having spoken is that C. H. Patil is his young brother and that therefore, the voters may vote for him.

391. The specific allegation in the petition is that both he and Basangouda were always in the company of C. H. Patil and moved about the constituency, particularly in the villages of Rajur, Sangana, Thondihal, Bhandihal, Kuknoor and

Yelburga. In regard to actual canvassing, other than merely attending meetings or making speeches at meetings, there is no evidence whatsoever. The only evidence of canvassing, is the canvassing by attending or making speeches at meetings. Not a single witness on behalf of the petitioner, makes any reference to the presence of Basangouda at any of the meetings.

392. The question also arises, for consideration of the general probabilities, whether Pundangouda would have been of such value to the propaganda on behalf of C. H. Patil in Yelburga. He is the police patel of a village which is outside the constituency. At the highest, he may be said to have some connections or friends in the neighbouring villages of Bhandihal, Thondihal or Karmudi. What influence or what powers or persuasion he could be said to have in rest of the territory of Yelburga constituency, is not capable of being gathered from any part of the evidence adduced by the petitioners. The evidence that in his speeches he recommended C. H. Patil to the electorate for no better reason than that he was his younger brother, will be totally ineffective unless Pundangouda himself is shown to be a man of considerable influence in the constituency. Whether he had any such influence in Yelburga constituency, there is no indication whatever in the evidence adduced on behalf of the petitioners.

393. The conclusion, therefore, should be and is that the evidence is quite insufficient to establish even the first step in the case, namely, that Pundangouda actually worked for C. H. Patil in the constituency of Yelburga. That being so, the further case that he did so with the consent of C. H. Patil or that Patil himself secured such assistance from him does not arise.

394. Although in view of my findings on issue No. 6 in Election Petition 3 of 1967 and issue No. 6(a) in Election Petition 6 of 1967, it will be unnecessary to make any reference to the evidence relating to other persons named in the said issue, I shall briefly indicate my opinion in regard to them also.

395. Gururao Desai is one person about whom there is some evidence. One part I have already discussed in relation to Pundangouda himself, namely, the evidence of P.W. 9 Kotrappa Hosamani. My difficulty in accepting that evidence in regard to Pundangouda is itself sufficient reason not to act upon it in regard to or as against Gururao Desai.

396. Another part of the evidence which has special reference to Gururao Desai is that which relates to the meeting at Kunknoor is Exhibit P-34 the invitation card relating to that meeting. Gururao Desai is mentioned as the person who will preside at the function. That the said card was printed under the instructions of Talkal Hussain and that it is in accordance with the manuscript text given to the printer for printing is proved. As Talkal Hussain is a person of some status and importance in Kunknoor, both as member of the Village Panchayat as well as the President of the Congress Mandal Committee, it can be taken that he must have secured the acceptance by Gururao Desai of his request to preside over the function. The definite case of the petitioners regarding this meeting is that Gururao Desai was present at the meeting and actually presided over the function. But Thirumala Rao, R.W. 3 and C. S. Hiremath, R.W. 10, examined on behalf of the respondents deny his presence. According to them, though he was expected to come and preside, he did not actually come, with the result Talkal Hussain himself took the chair and conducted the proceedings. That C. S. Hiremath was there is an admitted fact. According to the invitation, he was the person expected to do the opening ceremony; C. S. Hiremath himself says that he was there. The evidence, as already held, of both sides is characterised by an attempt to depart slightly from the truth. Neither side has placed before me the whole truth or the correct position. One side tried to play down the importance of the meeting and the other side to exaggerate beyond all believable proportions. The evidence of C. S. Hiremath makes it clear that he was in Kunknoor from about the second or third of February, 1967. The invitation card, according to the evidence was got printed on Saturday the 4th of February, 1967. According to C. S. Hiremath, he was approached about three or four days before the meeting, with a request to perform the opening ceremony. It is not unlikely, therefore, that Gururao Desai also might have been approached at or about the same time. It cannot, in my opinion, be much earlier than the 3rd of February, 1967. Probably both of them were approached on the 3rd and the steps taken to get the invitation cards printed the following day. Except stating that he did not actually come, neither C. S. Hiremath nor Thirumala Rao, gave any reason why he did not come nor even whether Talkal Hussain and others at the meeting were at least speaking amongst themselves about the possible reason for Gururao Desai not coming to the meeting. Answers

given by C. S. Hiremath are so cryptic and so obviously reluctant, it is difficult for me to accept that he has stated all that he knew about the matter.

397. Hence, should it at all become necessary to come to a conclusion on that matter, my opinion is that the probabilities are more in favour of Gururao Desai having attended the meeting than against it.

398. But because, in my opinion, neither Sanganna nor C. H. Patil were present and the invitation to Gururao Desai to come and preside over the function, is shown to have made only by Talkal Hussain, the said fact and such other facts as are established by the evidence, may not furnish more than a very slender ground for the inference that either C. H. Patil or Sanganna himself made any attempt to secure his assistance. C. S. Hiremath who was in Kuknoor at or about the time the invitation was extended to Gururao Desai to preside, may possibly have had some knowledge of it because it is not entirely unlikely that Talkal Hussain might have told him of the invitation or of the proposal to invite Gururao Desai to preside. This again is very slender ground for an inference against Sanganna.

399. About Channappa Mannapur, there is very little evidence. Some of the witnesses speaking about the meeting, say that he was present. Sirur Veerabhadra says that he has seen him in the procession at Kuknoor before the opening ceremony of the office commenced. But as the evidence is very meagre, the petitioner cannot be said to have established any part of his case so far as this village officer is concerned.

400. Kishenrao Vakil is said to have been present at the Kuknoor meeting and spoken at all the four meetings in Yelburga Town and also at another meeting in Kudrikotgi.

401. The case of the respondents as originally stated in their written statement was that Kishenrao Vakil, according to their information was bed-ridden or confined to his house having been struck by paralysis for a period about ten years now. This case, however, later appeared from the evidence to be either an exaggeration or the statement of an unverified piece of information. Veenkat Rao, R.W. 2, who is the son of Kishenrao Vakil, deposed that there was nothing particularly wrong with his father's health but that he was weak due to old age and that his eye sight was bad due to cataract. His cousin R.W. 3 Thirumala Rao stated that if he is assisted by some one, Kishenrao is able to walk even beyond the precincts of his house. C. H. Patil himself who said that he became acquainted with Kishenrao about two or three years ago, deposed that the occasion for him to meet Kishenrao was that during one of his visits to the house of Thirumala Rao Kishenrao had come there. It cannot be, therefore, that Kishenrao is so decrepit as to be quite unable to move or go out of his house. All witnesses are however agreed that he is about or more than 75 years of age and is naturally weak due to old age. All witnesses are also agreed that though he had been practising as a lawyer, having worked as Munsiff some forty years ago, he ceased to practise about ten years ago. On account of his failing eye sight and infirmities peculiar to old age, he is, such is the impression created by the evidence,—for the most part confined to his house and does not generally interest himself in other people's affairs.

402. His going to a place like Kuknoor which is about eight to ten miles away from Yelburga, appears to me very unlikely. Kudrikotgi is only one and a half miles away. Hence, if he is so minded, he could possibly have gone there. But the evidence is that he addressed a small gathering of about fifteen to twenty people. Thippanna P.W. 5 who speaks to this meeting, says that the said gathering was addressed by two other persons also, namely, Noolvi Veerabhadra and Rampur Basappa. Noolvi Veerabhadra, who has been examined as R.W. 6, has denied his having gone there. According to him, he in the company of three boys, went through Yelburga Town canvassing for Congress candidates. He denied having gone anywhere outside Yelburga Town. As the gathering is said to have been very small, I do not feel satisfied that the fact of Kishenrao having gone out for the purpose of addressing so small a gathering, can be accepted.

403. Regarding the meeting at Usukinakatte. I have already expressed my opinion, that it is not possible to act upon the evidence adduced on behalf of the petitioner relating thereto.

404. The meeting at the two temples were held on dates on which, according to other evidence of the petitioners themselves, neither Sanganna nor C. H. Patil could be expected to be present.

405. The greatest infirmity in the evidence is that, there is nothing in it to make out that either C. H. Patil or Sanganna sought the assistance of Kishenrao. The one and the only argument available is that Kishenrao mentioned in Exhibit P-30 is the person with whom we are concerned. Even that, in my opinion, is a matter for doubt, because there is clear evidence to show that there are three Kishenraos and there are in Exhibit P-30, the names of two Kishenraos. Further, as I have already pointed out the evidence of P.W. 20 Mudbasappa, goes to show that the manuscript Exhibit P-63 was not in the writing of Siddappa Karandi, but was only signed by him. There is no other evidence to show whether the names found written thereon represent the signatures of the persons bearing those names or whether they came to be mentioned therein after securing their consent.

406. Hence, it must be held that the petitioners have not made out their case so far as Kishenrao is concerned.

407. The last person is Shekargouda of Bochenahalli. The allegation in the petition that he had acted as the counting agent of Sanganna was and had to be given up. On looking into the counting agent appointment forms from among the papers called for from the Returning Officer, Shivamurthiswamy candidly admitted that Shekargouda is not one of the persons appointed as counting agent of Sanganna.

408. About the activities of the said Shekargouda, the evidence is of two witnesses, P.W. 14 Gavisiddaiah and P.W. 17 Murthuza. P.W. 14 Gavisiddaiah says that he has seen him at a meeting in a school in Bochenahalli convened for appealing for votes in favour of the Congress candidates. Murthuza P.W. 17 says that he was in the party travelling in jeeps from Koppal to Bochenahalli; that he saw him because the person who came to fetch him to attend on a patient in Bochenahalli took him in one of the jeeps and that not only in some villages enroute like Sindhogi, Katharki, etc., but also in the village Bochenahalli itself he had seen Shekargouda canvassing.

409. The evidence of Gavisiddaiah is criticised by Mr. Venugopalachari on the ground that he is admittedly a L.S.S. worker and also on the ground that he is the agent of a branch mutt at Koppal under the control of Shivamurthi Swami's Mutt at Alavandi. Regarding P.W. 17 Murthuza, his criticism is, it is highly unlikely that he would have been invited or permitted to travel in one the jeeps or that if his mission was to see a patient who was very ill, he would not have got into the jeep which was, to his knowledge, engaged in election propaganda work resulting in inevitable delay in reaching his patient's house.

410. I accept the argument of Mr. Venugopalachari as quite reasonable and available on the evidence and decline to act on the said evidence.

411. *My findings on these issues, therefore, are the following:—*

Issue No. 7 in Election Petition 3 of 1967.—(a) The petitioner has failed to prove that any of the persons mentioned in issue No. 6 canvassed votes for the respondent at the election except C. H. Patil, who was the Congress candidate of Yelburga Constituency.

(b) It is proved that Shekargouda had not acted as counting agent of the respondent.

*Issue No. 8 in Election Petition 3 of 1967.—*The facts proved under issue No. 7 do not establish the commission of corrupt practice under Section 123 (7) of the Representation of the People Act, invalidating the election of the respondent. C. H. Patil having canvassed support for the respondent does not have that effect, because he is not a person in the service of the Government.

*Issue No. 6 (b) in Election Petition 6 of 1967.—*The petitioner has failed to prove that the persons named in issue No. 6(a) canvassed votes for the respondent during the election.

*Issue No. 6(c) in Election Petition 6 of 1967.—*It does not arise in view of the findings on issue No. 6(b).

*Issue No. 7 in Election Petition 6 of 1967.—*The facts proved under issue No. 6 do not establish the commission of the corrupt practice under Section 123(7) of the Representation of the People Act, invalidating the election of the respondent.

412. The next issues for consideration are issues Nos. 1 and 2 in E.P. No. 3/67 raising the question whether Sanganna is disqualified by reason of his holding certain posts said to be posts of profits or by reason of the subsistence of a contract with the Central Government. The positions which are said to be posts of profit are those set out in issue No. 1 Sanganna admits that he held those positions but contends that they are not posts of profit under the Government so as to disqualify him under Article 102 of the Constitution. The contract which is said to disqualify him under section 9-A of the Representation of People Act is said to be a contract between the Koppal Agricultural Produce marketing Co-operative Society and the Central Government. Sanganna denies the existence of a contract and also raises the question that contract of the character mentioned above is not a contract within the scope of or purview of section 9-A of the Representation of People Act

413. The relevant portion of Article 102 is as follows:—

"102(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder****

The questions of law which arise, therefore, will be:—

1. Whether the positions held by Agadi Sanganna are posts under the Government;
2. Whether they are posts of profits;
3. If the answer to 1 and 2 is in the affirmative, whether they are by any Parliamentary legislation declared not to disqualify him.

414. Such Parliamentary legislation is the Parliament (Prevention of Disqualification) Act, 1959. (Central Act X of 1959).

415. On the question what is a post of profit, there is the following statement of the legal position by the Supreme Court in REVANNA SUBANN Vs. G. S. KAGGEERAPPA. (AIR 1954 Supreme Court P. 653, at Page 656 of the report):—

"The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit."

416. The question whether and if so, in what circumstances, a person may be said to hold an office under the Government was considered by the Supreme Court in several cases of which the following three cases are of importance.

1. Abdul Shakur Vs. Rikhab Chand, A.I.R. 1958 Supreme Court, P. 52.
2. Remappa Vs. Sangappa, A.I.R. 1958 Supreme Court P. 937; and
3. Gobinda Basu Vs. Sankarl Prasad, A.I.R. 1964 S.C.P. 254

The last of the cases refers to and discusses the position under the earlier two cases.

417. One position that is made quite clear is that to hold a post under the Government, it is not quite essential that the holding of the post is in the service of the Government.

418. In the case of Abdul Shakur, the post under consideration by Court was that of a Manager of a school appointed by a Committee of Management of a Durga. The school was one run by the said Committee. The appointment was by an Administrator of the Durga. Under a Statute called Durga Khaja Sahab Act, 1955, the Government of India had the power of appointing and removing the members of the Committee as also the power to appoint an Administrator in consultation with the Committee. The argument was that in view of all these statutory provisions, the position of the Manager of this school must be held to be a post under the Government. The opinion of the Court was that it was not such a post of profit.

419. In *Ramappa Vs. Sangappa*, the question arose in relation to hereditary village officers governed by the Mysore Hereditary Village Offices Act. The arguments pressed in the case on behalf of the village officers who had succeeded in the election were that the right to hold the office was the principle of hereditary succession and that having regard to the history of village administration and law applicable thereto in the erstwhile State of Mysore, hereditary village officer must be held or taken to hold the said office not under the Government but under the village community. Both arguments were rejected by the Supreme Court, which pointed out that although the right to appointment might be said to have been acquired by virtue of or by the operation of the law of succession, the actual right to hold the office is traceable to an appointment by the Government, notwithstanding the fact that by reason of the rule of hereditary succession, the Government might be, in most cases, obliged to appoint the heir next in order of succession to a deceased officer.

420. In the case of *Gobinda Basu*, the question arose in respect of the position of an Auditor of a Public Sector undertaking. The facts were that the candidate in question was appointed Auditor by the Central Government, that he was removable by the Central Government and the Comptroller and Auditor General of India exercised full control over him. His remuneration was fixed by the Central Government under a certain statute, though paid by the company or the undertaking. It was held the post was a post under the Central Government.

421. In the third case, the argument was advanced that before a post can be identified as a post under the Government, several circumstances should co-exist and at least five tests should be applied and satisfied before doing so. The tests suggested were:—

1. Whether the Government makes the appointment;
2. Whether the Government has the right to remove or dismiss the holder;
3. Whether the Government pays the remuneration;
4. What are the functions of the holder? Does he perform them for the Government?
5. Does the Government exercise any control over the performance of those functions?

Their Lordships of the Supreme Court declined to accept the proposition that all the above tests should be satisfied or all those conditions should exist, but observed that should they all co-exist, the inevitable conclusion would be that it is a post of profit under the Government.

422. While discussing the previous decisions of the Court, they indicate what appears to me to be their opinion as to an essential or very necessary test.

423. While discussing the case of *Abdul Shakur*, they cite a passage from the judgment in which there occurs the following sentence:—

"The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor."

424. Referring to the case of *Ramappa Vs. Sangappa* their Lordships categorically stated:

"There again, the decisive test was held to be the test of appointment".

425. As I read the discussion and the declaration of the law by their Lordships of the Supreme Court, it appears to me that an appointment by the Government is an essential condition for a post said to be under the Government. It should be remembered that the word "under" need not necessarily indicate or give the idea of total subordination as in the case of persons in actual service of the Government. The said word, therefore, in the context of election law and the objects or the purpose with which the disqualification is declared by the Constitution itself, must, in my opinion, be held to indicate that the good grace of the Executive Government is the thing that is considered to disqualify the person from being a member of the Legislative body. The idea is that if a person by reason of his holding a particular position is beholden to the Executive Government, he may not bring to bear on the discharge of his duties as a member of the Legislature

that type of independent and fearless criticism of the Executive Government as is expected or responsible members of a Legislature. If, therefore, a person could enter into or hold a position or a post without any need for either actual appointment or at least necessary previous approval by the Government, then he is not and cannot be said to be in any manner beholden to the Government, so far as the holding of the said office is concerned. The profits of the office are a subsequent consideration or a consequential benefit. Before profits are acquired or received, a person must hold an office to which those profits are attached. If, therefore, before getting into that office, it is necessary for him to seek the assistance of the Government either by way of actual appointment or by way of previous approval as an essential pre-requisite for appointment, it can be said that the person has to secure the good grace of the Executive Government and therefore be beholden to the Government and therefore the post would be a post under the Government within the meaning of and subserving the object of Article 102 of the Constitution.

426. In almost all cases, a power of appointment necessarily involves the power of removal or dismissal also. Although there may possibly be a power of appointment with no power of dismissal, the matter of dismissal being governed by separate or distinct provisions of law, it is not generally possible to postulate the power of dismissal unaccompanied by or unrelated to power of appointment. The two generally co-exist.

427. Mr Patil the learned counsel for the petitioner has stated that what is of greater importance is the power of dismissal and that there is at least one case in which it has been held that a power of dismissal alone in the hands of a State Government was itself sufficient to hold that the post in question is a post under the said State Government. The reference is to the case of the Vice-Chancellor of the Baroda University reported in 1 Election Law Reports, P. 171, (HANSRA JIVRAJ MEHTA V. INDUBHAI B. AMIN). The Vice-Chancellor in question had originally been appointed by the State of Baroda. Subsequently, the University came under the jurisdiction of the State Government of Bombay. The finding was that it was a position under the Bombay Government. The reason stated therefor was that at the relevant time the power to remove or dismiss a Vice-Chancellor vested in the State Government of Bombay. Although the factual position was such, I find that the decision proceeds on the principle already stated by me, namely, that the power of dismissal is related to the power of appointment, as is clear from the following passage appearing from the judgment at page 177 of the Report.—

"This brings us to the next question which is a very important one and that is who has appointed the petitioner to the office of Vice-Chancellor and (or) who can remove her from that office. As has already been indicated in paragraph No. 7 above, the petitioner was appointed Vice-Chancellor by the Government of the State of Baroda acting under the provisions of section 63 of the University of Baroda Act. The University of Baroda had nothing to do with this appointment. By reason of the amendment of Section 2(e) of the latter Act to which reference has been made hereinbefore, the Government of Bombay has stepped into the shoes of the Government of Baroda, and has now got the power of removing the petitioner from the office of Vice-Chancellor. The University of Baroda Act contains no specific provision on this point. But it is a recognised principle of law that a party having the power to make an appointment has also in the absence of a provision to the contrary the power to revoke it. This principle is specifically embodied in section 16 of the Bombay General Clauses Act. It may therefore be presumed that if the occasion arose to remove the petitioner from her office the Bombay Government had the power to do it."

428. The operative section in the Parliament (Prevention of Disqualification) Act, 1959, is section 3 which reads:—

"It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament"

Then the section sets out certain specified posts by name and description. The particular clause which is relevant for our present discussion is clause (i) of the said section which reads as follows:—

“the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h) if the holder of such office is not entitled to any remuneration other than compensatory allowance, ****

The rest of the clause is not relevant for our present purpose. A non-statutory body is a body other than a statutory body. The statutory body is defined in clause (b) of section 2 as follows:—

“‘statutory body’ means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force.”

Clause (a) of the same section defines compensatory allowance.—

“‘compensatory allowance’ means any sum of money payable to the holder of an office by way of daily allowance [such allowance be not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954 (30 of 1954)], any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;”

429. The resultant position, therefore, is that if any one of the posts held by Sanganna cannot be said to be posts either under Government or the posts of profits, no occasion arises for invoking the provisions of Prevention of Disqualification Act. If, however, any of these posts comes within the meaning of a post of profit under the Government, then a question will arise, whether the consequent disqualification is removed or prevented to operate by the Prevention of Disqualification Act.

430. In May, 1964, Sanganna was elected as a member of the Mysore Legislative Council. By virtue of such membership, he became an *ex-officio* member of the Koopal Taluk Development Board under sub-section (2) of section 96 of the Mysore Village Panchayats and Local Boards Act, 1959 and a member of the District Development Council of Raichur under Section 187 of the same Act. Because he was a member of the State Legislature, the State Government appears to have appointed him as a member of Advisory Board for Irrigation Development under the Tungabhadra Project (Raichur side) and Rajollbanda Diversion Scheme. The appointment was notified under an order No. DPC 67 DTD 65 (A) dated 30th October, 1965, a copy whereof is produced as Ex. P.9.

431. Now, so far as the membership of the Taluk Development Board and District Development Council is concerned there is no appointment by the State Government at all. He becomes a member of these two bodies by force of the relevant provisions of the Mysore Village Panchayats and Local Boards Act cited above. It has, however, been argued that at least in the case of a member of the Taluk Board, there is power in the Government to remove him under section 111 of the Act.

That section states:—

“111. On the passing of a resolution by a Taluk Board by a majority of not less than two-thirds of the total number of members of the Board, recommending the removal of a member of the Taluk Board, the Government, after giving such member an opportunity of being heard and after such enquiry as the Government deems necessary, may, by order, remove such member if in the opinion of the Government, such member has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or has been incapable of performing his duties as a member of the Board.”

There is no such power so far as members of the District Development Council are concerned. Even the power under section 111 appears to me not so much a direct power of removal but a sort of veto over the majority opinion of the members of the Board expressed in a resolution to remove the member. Section

196 of the Act, which declares that the Commissioner shall subject to the control and orders of the Government, be the chief controlling authority in respect of matters relating to the administration of the Act need not, in my opinion, mean any direct personal control over the acts or functions of individual members of a Board or body constituted under the Act.

432. The membership of the Taluk Development Board and District Development Council is not, therefore, in my opinion, post under the State Government.

433. The payments to members of Boards or bodies constituted under the above Act are governed by a set of rules notified by the Government under notification No. LLH 30 RPA 60 dated Bangalore, the 23rd September 1960 (Asvija 1, Saka Era 1882), in exercise of powers conferred by section 210 read with section 166(1) clause (a) of the Act. Those rules are for calculation and payment of Travelling and Daily Allowances to President and members of the Taluk Development Board or the District Development Council. Under the rules, the Travelling Allowance in the case of Railway accommodation is first class fare together with a payment described as incidental charges for railway journeys at the rate of 4 paise per mile. In the case of other modes of travel, road mileage is paid at 30 paise per mile. Daily allowance is also provided at the rate of Rs. 5-50 per day for halts at places within the State and Rs. 8 per day for halts at places outside the State. For bus journeys, where the distance travelled is not less than 20 miles, the travelling allowance is one and half times the actual bus fare plus the daily allowance and in the case of journeys of less than 20 miles one and half times the actual bus fare or daily allowance in lieu thereof.

434. These payments *prima facie* fall within the definition of compensatory allowance, because payments are intended for meeting expenses of journey and halts away from a person's place of residence.

435. The only argument of Mr. Patil which should be noticed in this connection is that whatever may be position in regard to daily allowance or fares for railway journeys or bus journeys etc., the payment described as incidental charges for railway journey is a payment which falls outside the scope of the definition. It could so fall beyond the scope of the definition only if we apply the test of the use of identical words to describe the nature of a payment. If, however, by the expression "travelling allowance", we mean, as ordinarily everybody does, a payment to meet reasonable expenses of a journey, it would include not merely a fare paid for the transport taken advantage of but also other expenses like cost of food enroute, fare or freight charges, if any, paid in respect of necessary travelling baggage. Hence, in all cases, rules providing for payment of travelling allowance, there is always one item relating exclusively to the fare for the transport by train, steamer or bus and another which is a fraction thereof, intended to meet the other items of expenditure mentioned above. In my opinion, the item described as incidental charges in the rules is an item intended to meet reasonable expenses of journey in addition to or other than the fare of the transport. I do not, therefore, accept Mr. Patil's interpretation of the same.

436. Hence, even if it should at all be possible to hold that the membership of either the Taluk Development Board or District Development Council is a post of profit under the Government, any possible disqualification in consequence of Sanganna getting those positions is prevented from affecting him by reason of the fact that the payments or profits receivable by virtue of such membership are only in the nature of compensatory allowance within the meaning of the Prevention of Disqualification Act.

437. So far as Tungabhadra Board is concerned, only evidence that we have is that furnished by Ex. P9. The order after appointing several persons including Sanganna as non-official members of the Advisory Board, proceeds to make the following provisions:—

"The non-official members shall draw T.A. and D.A., at the rates given in list "A" of Annexure to Rule 4(a) of the New Mysore Travelling Rules, 1957."

438. Those rules were promulgated under a Notification No. COD 1168-57 dated 23rd August 1957. The operative rule is 4 which refers one to the Annex-

ure for ascertaining travelling allowance and daily allowance permissible for non-official members of Advisory Boards etc. Annexure has three lists A, B and C. we are concerned only with list A. Annexure with the said list reads:—

"Rates of Travelling Allowance to non-official members attending various committees:—

List A.

I. Railway Accommodation	First Class.
II. Incidental charges for Railway Journey	6 np.
III. Road Mileage	50 np.
IV. Daily Allowance (within the State) (Sitting Fees wherever permissible will be allowed in lieu of Daily Allowance.)	Rs. 10.

439. Regarding incidental charges, I have already dealt with the argument. We have no evidence whatever either oral or by way of statutory rules or otherwise, on the question whether any sitting fee is at all payable to any member of this Board.

440. It follows, therefore, that the membership of this Board, though a post under the Government, as the power of appointment thereto is exclusively by the Government and it may have attached to it some allowances, such allowances are within the definition of "Compensatory allowance". The disqualification, if any, therefore, is prevented from coming into operation.

441. The Koppal Taluk Agricultural Produce Marketing Cooperative Society (hereinafter referred to as the Society) is a Cooperative Society incorporated under the Mysore Cooperative Societies Act. Sanganna has been the Chairman of its Board of Directors from about 1963. It is governed by a set of bye-laws which are produced and marked Ex. R. 3. The Bye-laws had been amended even before Sanganna became a Chairman. The relevant copy of the amendments is produced and marked Ex. R. 4. The bye-law No. 48 (B) (1) as amended provides for payment to the Chairman an honorarium of 10 per cent of the profit or Rs. 2000/- whichever is lower. There is the oral evidence of Sanganna himself to the effect that every Director including the Chairman gets a sitting fee of Rs. 3/- and that as a Chairman he is entitled to Travelling Allowance at first class railway fare or actual bus fare plus daily allowance of about Rs. 5/- within the District and Rs. 8/- outside the District.

442 He has also actually received the honorarium right up to 1966-67 Exhibit P-10(a) dated 30th June 1966 is a receipt for Rs. 1,092.60 being his honorarium for the year 1963-64. Exhibit P-11(a) is a receipt dated 23rd January 1967 for honorarium of Rs. 1,227.10 for the year 1964-65. Exhibit P-5 the Annual Report of the Society for the year 1965-66 shows that a sum of Rs. 2,000/- was paid as honorarium for the year 1965-66. Exhibit P-87 the Annual Report for the year 1966-67 shows that honorarium of Rs. 1,227.10 was paid; it is not clear from the report to which year the payment relates. But from the fact that it is set out in the expenditure column of the Income and Expenditure Account for the year 1966-67, it may be that it relates to the same accounting year.

443. Now, the evidence of Sanganna supported by the bye-laws is that directors of the Society are elected by the members, and the Chairman is elected by the directors. Hence there is no appointment by the Government. Section-30 of the Cooperative Societies Act is relied upon to show that at least the power of removal vests with the Government. But that section deals with the supersession of the entire committee and not with the removal of any individual member. There is also no provision anywhere in the Act vesting the power in the Government to remove any individual member of the Board of Directors of a Cooperative Society. The Report Exhibit P-5 shows that the total value of the share-holding of 63 primary and 700 individual members was Rs. 14,194.29 as against which the Government's share-holding was of the value of Rs. 1,16,150.00 plus the share capital contributed by the Government for rice mill Rs. 2,25,000/-.

444. It is also in the evidence of Sanganna that in respect of the grains compulsorily levied and purchased by the Government pursuant to certain Control Orders, the Society was functioning as the principal purchasing agent of the State Government at all levels of procurement and levy. For the purpose of paying the price of the grains so compulsorily levied, the Government used to put the Society in funds and the society used to make payment to agriculturists. A small amount of commission or remuneration payable to village officers like the patels whose services were utilised for the purpose of procurement was also being paid by the Society with the money provided by the Government.

445. It has also been elicited from him that the Society was also dealing in such articles as steel, cement, etc., which are controlled articles, that is to say, articles whose purchase, possession, sale, distribution, etc., are controlled by special statutory orders issued by the Government either under the Defence of India Rules or under the power conferred by the Essential Commodities Control Act by means of a system of licenses, permits, allotment of quotas, etc.

446. The Society being a cooperative society under the Mysore Cooperative Societies Act, its activities, administration, disposition of its funds, finances, budget, etc., are all matters controlled or governed by several provisions of the said Act.

447. On these facts, the arguments on behalf of the petitioners are, firstly, that the position of the Chairman of the Society held by Sanganna must be regarded as a post of profit under the Government and secondly, that the sitting fee and honorarium receivable by him as such chairman being clearly beyond the scope of the definition of "compensatory allowance" in Central Act X of 1959, the disqualification consequent upon the holding of the said position cannot be said to have been prevented from operating by the provisions of the said Central Act.

448. As I have already observed, neither a director nor a chairman of the Society is either appointed or removable by the Government. The powers under the Cooperative Societies Act for the supersession of the Board of Directors and the appointment of an administrator to manage the affairs of a Society, are not even on a par with the power of removing any individual from a post or position occupied by him. The control which is exercised under the Cooperative Societies Act is, in my opinion, not different in principle from controls exercised under other Acts such as the Companies Act. It is no doubt true that in certain respects the financial control of cooperative societies is more extensive and more detailed than in the case of companies governed by the Companies Act. But that is a result of the policy of the Government to encourage cooperative effort for the betterment of the country by providing cooperative societies with considerable financial assistance from out of the public revenues. A provision is made, for example, in Chapter VI of the Act for extensive State aid being made available to cooperative societies to encourage and promote the cooperative movement including encouragement of cooperative farming in the State. Such assistance by the Government from out of Public revenues is described in the statute as partnership,—direct partnership, when the State Government itself, directly subscribes to the share capital of a cooperative society with limited liability and indirect when the State Government provides moneys to a cooperative society called an apex society for the purchase of shares in other cooperative societies with limited liability. But when the Government funds actually reach a cooperative society, they become funds of the said society, because it is a separate statutorily incorporated body. It is in view of the legal consequence that most stringent control over the disposition of funds of a cooperative society is provided and exercised under the Cooperative Societies Act.

449. In view of the foregoing, I am unable to accept the argument that the position of either a director or a chairman of the cooperative society is the same as a post under the Government.

450. It would follow therefore that no further question arises as to whether it is necessary for Sanganna to depend upon the provisions of the Central Act X of 1959.

451. Although the issue is limited to the position of a chairman amounting to a post of profit under Article 102 of the Constitution, some argument was addressed on the footing that in any event, the said position may operate as a disqualifying factor under section 10 of the Representation of the People Act which reads as follows:

"A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share."

452. As it is quite apparent, this Section is an additional disqualification prescribed by Parliamentary statute pursuant to Article 102(1)(e) of the Constitution. The posts which are said to disqualify a person are those of managing agent, manager or the secretary of a company or corporation in which the Government holds more than 25 per cent share. But a co-operative society is excluded from the description of corporation contained in the section. It would follow therefore that a co-operative society or any office-bearer therein is completely

outside the purview of this section. That was the view I expressed in my order framing the issues in this case which furnishes reason for my not mentioning this section in the relevant issue. I may also record that in the course of his cross-examination Sanganna deposed that as Chairman he exercises control over the management of the society, that the expression 'management' includes control over business, control over staff, control of committee, control of funds and in short every type of control. He gave the effect of his answers as follows:

"It will be correct to say that I as Chairman would have complete control over the affairs of the Society."

If so, he would certainly answer the description of a manager.

453. The contract, which is said to operate as a disqualification under Section 9A of the Representation of the People Act, is described as a contract between the Society on the one hand and the Central Government on the other. Even at the time when the issues were framed, it was admitted on behalf of the petitioners, nor was it at any time subsequently disputed,—that the contract was not one between the Government on the one hand and the respondent personally on the other, but was only between the Government and the Society. The disqualification under Section 9A is of a person if, and so long as, there subsists a contract entered into by him with the appropriate Government of the nature described in that section. The appropriate Government as defined by Section 7(a) is the Central Government in the case of disqualification for being chosen as a member of either House of Parliament. Among the definitions contained in Section 2 of the Representation of the People Act, 1950, (Central Act 43 of 1950) which are lifted into the Act of 1951 is the one contained in clause (g) thereof which reads—

" 'person' does not include a body of persons."

454. Hence a contract, to which the Co-operative Society is a party, cannot be regarded as a contract to which any member thereof is individually a party. For one thing, co-operative society is a body of persons; secondly, co-operative society is an incorporated body with legal personality quite different from that of the members holding shares therein.

455. Nevertheless, Mr. Patil has made an attempt to spell out a contract sufficient to disqualify Sanganna on the basis of two lines of interpretation of the legal provisions. In the first place, he says that payment of honorarium under the provisions of one of the bye-laws of the Society spells out a contract. The argument is that bye-laws are binding on the society and all its members on the legal basis that it is a contract or agreement between the society on the one hand and its members on the other and also as between the members *inter se*. The State Government, he says, as a shareholder of the Society and Sanganna who is a similar share-holder are individually parties to that contract. It was suggested to Sanganna and not seriously disputed by him that payment of honorarium covered all the work done by him as the person in charge of the management of the affairs of the Society and that the same would mean attention to details of the work done on behalf of the Government in respect of the procurement of grains, as well as in respect purchase, distribution and sale of controlled articles. In regard to controlled articles the position taken up in the course of the arguments is that the ultimate power of exercising control is that of the Central Government either under the Defence of India Rules or under the Essential Commodities Control Act, and that the control which the State Government may exercise within the territories of the State is a control exercised by virtue of delegation by the Central Government to it of its (Central) Government's statutory powers of control. He therefore says that in the matter of exercising such control, the State Government must be regarded to be or to have been, or to have occupied the position of, an agent of the Central Government. The ultimate result of all these positions or the operation of these legal principles is, according to Mr. B. S. Patil, to bring into existence a contract at least in the eye of law to which Sanganna was one of the parties and the Central Government the other or another party. Hence even if the society may be one of the parties to the said contract, the same does not eliminate the position that Sanganna was also a party thereto.

456. This theory, in my opinion, is a little far-fetched. The fact that an office-bearer of a corporation becomes entitled to a payment by way of remuneration or otherwise by virtue of a provision contained in the Articles or the bye-laws governing the administration of the corporation does not, in my opinion, bring about a contract between him and every one of the members or share-holders of

that corporation. The articles or the bye-laws are said to be in the nature of an agreement binding both on the corporation as well as on its members, because or with a view to indicate that the source of its enforceability is the original acceptance thereof by all members who voluntarily became or agreed to become members of that corporation. When a number of persons voluntarily combine to form an association either for trade purpose or for other purposes, they have necessarily to agree upon a clear definition of their rights and liabilities acquired by or imposed on them for the smooth working of the entire association to make it possible to achieve the object with which the said association is formed. In the case of ordinary partnership, the agreement between them would be contained ordinarily in a document called the deed of partnership while entering into a partnership which is governed by the Contract Act and the Partnership Act. The separate legal personality capable of bearing rights and liabilities, which each partner as a living person has, is not destroyed. Where, however, that association is invested by the law with a separate legal existence as a legal personality in itself and separately capable of bearing rights and liabilities, the separate personality of the individual members constituting it disappears so far as the working of the corporation is concerned. Thereafter, he has only got such rights and liabilities as are fixed by or ascertainable from the articles or the bye-laws or the constitution of that corporation by whatever name called. It is not possible therefore, in my opinion to agree with the argument that when there is a bye-law providing for payment of a certain sum of money by way of honorarium or otherwise to any one of the office-bearers of the corporation, there necessarily arises any contract between the said office-bearer and every one of the members of the corporation.

457. It is also not possible to accept the suggestion that in exercising the powers of control under different control Orders promulgated by it, the State Government must be regarded as an agent of the Central Government,—an agent that is to say of the character known to the Law of Contract. The powers of control which the Executive Government exercises, whether it be Central Government or State Government, are powers conferred by the statutory Law. The rules or orders which the Executive Government may in exercise of the powers conferred upon it promulgate, are a species of subordinate or facultative legislation. In making and promulgating rules, the Executive Government is exercising the power delegated to it by Legislature and not by another Executive Government like the Central Government. There may be in the Constitution positions or situations in which the Central Government may indent upon the services of a State Government for the exercise of the Central Government's executive power,—executive power quite apart and distinct from the power of control or rule-making power conferred upon it by a statute already enacted by Parliament. In the matter of exercise of executive power in a field not till then occupied and controlled by legislation, the Constitution provides that the State Government shall not exercise its executive power so as to obstruct the exercise of the executive power by the Central Government. The entire matter is therefore governed either by the principles of constitutional law or in the light of the statutes actually enacted by Parliament.

458. I therefore hold that no contract, which would bring about a disqualification under Section 9A of the Representation of the People Act, has been proved to exist or subsist on the relevant date.

459. The last post or position held by Sanganna which remains to be considered is the membership of the Mysore State Khadi and Village Industries Board. That is a Board constituted under the Mysore Khadi and Village Industries Act, 1956, for the purpose of organising, developing, and regulating the Khadi and Village Industries in the State of Mysore.

460. Under Section 3, the Government is required to constitute the Board. Sub-section (2) thereof declares that the Board shall be a body-corporate having perpetual succession and a common seal with competence to acquire property, enter into contracts, etc. Section 4 provides that the Board shall consist of such number of members, not exceeding fifteen, as the State Government may appoint. One of the members may be appointed by the State Government as the Chairman. Although the Chairman as well as any member may resign his position under sub-section (2) of Section 4, Section 6 of the Act gives the power to the State Government, after such enquiry as may be necessary, to remove from office either a chairman or any member of the Board for any one of the reasons set out in the said section.

461. Although the Government under section 20 may, from time to time, make subventions, grants, etc., to the Board for carrying out the purposes of the Act

and subject them to such terms and conditions as they may consider necessary in each case, such subventions go into the funds of the Board defined or described in Section 21 of the Act. Under Section 22, all property, funds and other assets of the Board shall be held and applied by it subject to the provisions and for the purposes of the Act. Sections 23 and 24 lay down that the budget prepared by the Board for a forthcoming financial year is subject to sanction by the Government and the sanctioning Government may make such modifications therein as it may deem proper. Under section 26, the Board is required to prepare and forward to the State Government an annual report within three months of the termination of a financial year giving a complete account of its activities during the previous financial year. The said report is required to be laid before each House of the State Legislature. Section 31 is the section conferring upon the Government the power to make rules for carrying out the purposes of the Act. One of the matters in respect of which the Government may make rules is the payment of allowances to the members of the Board under Section 4. Reference is to sub-section (3) of section 4, according to which the Chairman and other members shall receive such allowances as may be prescribed from out of the funds of the Board.

462. Pursuant to the above rule-making power, the State Government first issued a set of rules on the 17th of February 1958. The rule relating to payment of allowances was Rule 4 which read as follows:—

"4. For the purposes of reimbursing the personal expenditure incurred:—

(a) In attending the meeting of the Board or of any Committee appointed under Section 10, or

(b) In travelling for the purposes of discharging and performing the functions of the Board, the Chairman and each of the other members of the Board shall be entitled for journeys to and from the meetings where such meetings are held or function is performed, as the case may be, to travelling and daily allowances as provided in List "A" referred to in Government Notification No. COD/1168/57 dated the 23rd August 1957 "A" class Committee."

The said rule underwent two subsequent amendments,—one by a notification dated 6-8-1958 and the other by a notification dated 26-12-1960. Under the first amendment, the rule as amended stood as follows:—

"4(a) For the purpose of reimbursing the personal expenditure incurred in attending the meetings of the Board or of any Committee appointed under section 10, or in travelling for the purposes of discharging and performing the functions of the Board, the Chairman and each of the other members of the Board shall be entitled for journeys to and from the meetings where such meetings are held, or function is performed, as the case may be, to travelling and daily allowances as for first class Government Officers and sitting fees for attending the meetings of the Board at Rs. 16/- per day. The Chairman and Members, however, will not be entitled to receive for the same day both the sitting fee and Daily Allowances.

"(b) The Chairman shall also be paid an allowance of Rs. 300 per month."

Under the second of the amendments the rule as amended stands as follows:—

"4. (1) For the purpose of enabling the Chairman to recoup the expenditure incurred by him in attending the meetings of the Board, or of any Committee thereof, or performing other functions as Chairman of the Board, the Chairman shall be entitled to the payment of compensatory allowance by way of house rent allowance, conveyance allowance, travelling allowance, daily allowance and sitting fees, at the rates and upon the conditions specified in this sub-rule.

We are not concerned with this sub-rule. Sub-rule (2) which relates to ordinary members like Sanganna is as follows:—

"(2) For purposes of enabling a member of the Board to recoup the expenditure incurred by him in attending the meetings of the Board, or a committee thereof, or performing any function as a member of the Board, every member other than the Chairman shall be entitled for journeys to and from the places at which the meetings of the Board or of any committee thereof are held, or the function is performed, as the case may be, to travelling and daily allowances as are payable under the Mysore Civil Service Rules, 1958, to officers of the State Government whose actual pay is one thousand and two hundred rupees per mensem or more, and sitting fees for attending the meetings of the Board or a Committee thereof "at sixteen rupees per day:

Provided that no Member shall be entitled to receive for the same day both the sitting fee and the daily allowance."

That rule continues to govern the position at present.

463. It will be seen that in the first notification the Government simply applied to the Khadi Board the New Mysore Travelling Allowance Rules 1957, already referred to by me, containing provisions for calculation of travelling and daily allowances to non-officials of various Boards including Advisory Boards or committees constituted under the authority of the Government. The first and the second amendments applied the provisions of the Mysore Civil Services Rules, 1958, so far as the travelling and daily allowances are concerned and provided for a sitting fee of Rs. 16 per day, with the proviso that sitting fee and daily allowance shall not be drawn in respect of the same day. The second of the amendments does not make any difference in substance; instead of referring to the class of the Government servants the rules applicable to whose travelling allowance are applied to the members of the Khadi Board, the said Government servants are described as Government servants drawing actual pay of not less than Rs. 1,200 per mensem. That language is copied from the Travelling Allowance Rules contained in the Mysore Civil Services Rules (hereinafter referred to as MCSR).

464. So far as the Travelling Allowances Rules contained in the MCSR are concerned, no particular difficulty arises, because they furnish the pattern for the New Mysore Travelling Allowance Rules, 1957, which are already discussed. The provision for the payment of a fare and another payment called in the Rules 'incidental fare' and daily allowance of Rs. 10, and they also contain the same provisions regarding journeys by bus for distances of less than or more than 20 miles. The argument regarding the incidental fare is the same as the argument regarding incidental charges under the New Mysore Travelling Allowances Rules, 1957. For the reasons already stated, I have no doubt that though the expression 'incidental fare' is used, the amount payable as such is really an item of expenditure covered by the expression travelling allowance. Hence all these payments under any one of the rules of the MCSR applicable to travelling allowances would come clearly within the scope of the definition of 'compensatory allowances' in Central Act X of 1959.

465. The only matter that has to be considered is whether the payment described as sitting fee is within or beyond the scope of the said definition of compensatory allowances.

466. The argument on behalf of the petitioners is that the same is an item of payment distinct and different from any payment which might be brought within the scope of the expression 'travelling allowance', 'daily allowance', etc. The latter alone, according to the argument, answers the purpose of the definition of compensatory allowance in the Central Act X of 1959. The purpose, according to the argument, is enabling a person to recoup any expenditure incurred by him in performing the functions of an office. The only payments which will answer or subserve that purpose, according to the argument, are those expressly described in the definition, viz., daily allowance, conveyance allowance, house rent allowance and travelling allowance, and no other.

467. The argument on behalf of the respondents accepts the first part of this argument, viz. that compensatory allowances are allowances intended to enable a person to recoup the expenditure incurred by him. The other part of this argument is, however, not accepted. On the contrary, it is argued that compensatory allowances, as the expression itself indicates are allowances in the nature of compensation, that is to say, allowances intended to neutralise any pecuniary disadvantage a person may suffer by or in the course of discharging the functions of an office held by him, and that the expressions 'daily allowance, conveyance allowance, house rent allowance, travelling allowance' are only illustrative in character and not exhaustive.

468. Proceeding on that footing, the further argument on behalf of the respondents is that a payment described as sitting fee in the rules just copied is not really a payment by way of remuneration or a profit in the sense of receipt of a pecuniary benefit without any expenditure having been incurred but in actual event another name for daily allowance. It is pointed out that the New Mysore Travelling Allowance Rules, 1957, which were uniformly applied to all non-official members of committees or bodies themselves make it clear that such non-official members are to get only allowances to meet expenditure. Because the rules may apply to several committees and there may be some committees which have their own rules providing for payment of sitting fee, the Annexure to Rule 4 states that any such sitting fee shall be allowed in lieu of daily allowance, i.e., in the place of daily allowance. The present position, according to the argument,

despite the amendments, does not bring about any change in the said situation. The sitting fee of Rs. 16 in the rule as it stands now is described as a payment per day, and not per meeting. The evidence of Sanganna is also to the effect, — and that seems to be the true interpretation of the rule, — that although there may be several meetings attended by a person on the same day, he can get only one payment of Rs. 16 for that day and not daily allowance.

469. By way of general support to this interpretation, Mr. Venugopalachari says that from the commencement and even after the two amendments the general setting of the rule has not changed. Throughout it says that the payments mentioned therein shall be made—

“for purposes of enabling a member of the Board to recoup the expenditure incurred by him in attending the meetings of the Board, or a Committee thereof, or performing any function as a Member of the Board.”

470. Mr. Patil's answer to this line of argument is that the sitting fee is a well known expression. It is a fee paid for discharging a particular function, and not an allowance paid for meeting a particular expenditure. Although it may be described as a payment per day, it may nevertheless be described as a payment for attending a meeting. He also says that in the case on hand, whereas the daily allowance is Rs. 10, the sitting fee is Rs. 16 and that if the rules take it for granted or proceed upon the assumption that a payment of Rs. 10 is sufficient to meet the ordinary expenses of a person per day, the additional payment of Rs. 6 in excess of Rs. 10 must be a fee in its original sense and not an allowance for meeting the expenditure.

471. The fact that the expression 'sitting fee' has that meaning as explained by Mr. Patil can admit of no doubt. The only question is whether the use of the said expression is alone sufficient to prevent any further investigation into the real nature and purpose of the payment.

472. I am not satisfied that the mere use of the expression 'sitting fee' will disentitle a party from asking the Court, or disable the Court from going into the question, whether the payment is or is not intended by the rules to meet expenditure.

473. In determining whether a set of rules providing for travelling, daily or other allowances intended to meet expenditure is intended to enable persons to recoup the expenditure incurred by them, unless a clear case of positive dishonest intention on the part of the rule making authority or body is made out, I think it is a reasonable to proceed on the footing that the rules assume or hold or declare that the amounts prescribed by them are considered sufficient to meet the expenses for which they are provided. Both the learned counsel have also agreed that any saving made by a parsimonious person from out of travelling and daily allowances, or the possibility of anyone doing so, cannot be relied upon as a test to hold that the rules themselves are a cloak for payment of profit and not an allowance for neutralising a disadvantage.

474. If that much can be accepted as correct. — and I see no reason why I should not, — all allowances prescribed under the Travelling and Daily Allowances Rules will and must be held to fall within the ambit of the definition of 'compensatory allowance'. While discussing Mr. Patil's argument regarding the incidental charges or incidental fare, I have already expressed the view that so long as it is clear from the rules that the said payment is intended to meet the expenditure reasonably incidental to a journey in addition to or apart from the fare for the transport, the mere use of the expression 'incidental charges' or 'incidental fare' will not take the payment beyond the scope of 'travelling allowances'.

475. If so, there is some meaning or some purpose why the rules have throughout made the consistent provision that wherever sitting fees are paid, daily allowance shall not be paid. In the Rules of 1957, the payment is directly under the heading "Daily Allowances". The words within the brackets written under the said heading show that sitting fee wherever permissible will be or must be received in lieu of daily allowance. In other words, the amount directed to be paid by the rules of a particular committee as and for sitting fee shall be received by the person governed by the Travelling Allowances Rules as and for daily allowance under the Travelling Allowances Rules. It is in the nature of an alternative statement of the position by way of what may be described as legislation by reference.

476. The present rules of the Khadi Board, though drafted in a slightly different way, are not different in effect from the corresponding provisions of the New Mysore Travelling Allowances Rules of 1957. They prescribe travelling allowances as provided for by the MCSR and daily allowance of Rs. 10, and then prescribe a sitting fee for a day with the provision that on the same day, sitting fee and daily allowance shall not be drawn. The result is that one gets substituted for the other.

477. If so, the payment going by the name of the sitting fee in circumstances mentioned above will be a payment in lieu of daily allowance or in the place of daily allowance and therefore, the sitting fee is only another name for daily allowance. If this position can be accepted then, the payment going by the name of sitting fee but actually of the nature of daily allowance will fall within that expression 'daily allowance' enumerated in the definition of 'compensatory allowances' in the Central Act X of 1959. If it is not so clearly relatable to it, the argument of Mr. Venugopalachari is to treat all those expressions as merely illustrative and rivet attention on the purpose of the rules, viz., that 'compensatory allowance' is a payment to meet the expenditure.

478. Mr. Patil's contention is that the effect of the rule is not to substitute the sitting fee for daily allowance but that on a day when there is a meeting in respect of which a member gets the sitting fee, the payment of daily allowance is actually disallowed by the rules. In other words, on a day when a person gets a sitting fee, the rules consider it unnecessary to provide him with a daily allowance. Therefore, there is no daily allowance at all on that day and therefore the payment called the sitting fee is sitting fee and something quite different from daily allowance.

479. The argument is very attractive. But there is one snag in it. If the rules provide for payment of a daily allowance, and if it is accepted that that payment is a payment for meeting expenditure, then, if the rules withdraw that payment, they must be regarded to proceed on the footing that the person sought to be provided for is provided with another source for meeting his expenditure; otherwise, a disallowance of daily allowance would mean that even in cases where the rules contemplate that a person may have to incur expenditure, no payment shall be made to him, which means that the rules do not mind even if the person sought to be provided for incurs a loss. Such an intention cannot be attributed to the authority which made the rules for the express purpose of providing certain persons with a payment to meet their expenses incurred, not for their private use, but in the discharge of public duties as a member of some committee or body. If the inference that the rules point to another source available to a person for recouping his expenditure is possible, then, there could be no doubt that that other source which is the sitting fee is regarded by the rulemaking authority as a payment for meeting his expenditure.

480. It appears to me that the view contended for on behalf of the respondents should be accepted as a fair interpretation of the relevant statutory provisions.

481. One possible reason why the rules in the Mysore State use this expression is or may be that the definition of compensatory allowance in the Mysore Prevention of Disqualifications Act enumerates the sitting fee among its items without disturbing the general purpose of making provision for enabling a person to recoup expenditure incurred by him. It may also be noted that whereas the Central Act uses the general expression 'statutory body' or 'non-statutory body', the Mysore Act uses the expression 'committee' and defines it separately. It may be that the introduction or use of the expression 'committee' has inevitably led to the use of the expression 'sitting fee' as a measure of drafting necessity.

482. Whatever that be, if the purpose and the effect of the rules is as stated above, there can be no doubt that the sitting fee payable to a member of the Khadi and Village Industries Board in Mysore is not a fee or remuneration for my function discharged but in the nature of a payment to enable him to recoup expenditure incurred by him.

483. I therefore hold that though by virtue of appointment, control and the right of removal vesting in the Government, the membership of the Mysore Khadi and Village Industries Board would be a post under the Government and also a post of profit because allowances are attached thereto, the disqualification consequent upon holding such post is prevented from operating by Parliament Prevention of Disqualifications Act (X of 1959).

484. My findings therefore on issues 1 and 2 in E.P.3 of 1967 are the following:

Issue 1: The respondent is not disqualified under Article 102 of the Constitution for being chosen as a member of the House of People by reason of his having been at the time relevant for the election a member of the Mysore State Khadi and Village Industries Board, the Chairman of the Koppal Taluk Agricultural Produce Co-operative Marketing Society, a member of the Advisory Board of the Tungabhadra Irrigation system, a member of the Koppal Taluk Development Board or a member of the Raichur District Development Council.

Issue 2(a): The petitioner had failed to prove that there was subsisting on the date relevant for the election a contract between the Koppal Taluk Agricultural Produce Co-operative Marketing Society Limited on the one hand and the Central Government on the other.

Issue 2(b): This issue does not arise, nor is it proved that the respondent is disqualified under Section 9-A of the Representation of the People Act for being chosen as a member of the House of the People.

485. In the light of the findings above recorded Issue No. 9 in Election Petition 3 of 1967 and Issue No. 11 in Election Petition 6 of 1967 have to be found against the respective petitioner. I hold that neither petitioner is entitled to a declaration that the election of the respondent in his Petition is void.

486. Consequently, issue No. 10 in Election Petition 3 of 1967 does not arise. The formal finding thereon would be that the petitioner is not entitled to a declaration that he has been validly elected at the election.

487. In the result, both the Election Petitions 3 and 6 of 1967 are dismissed.

488. The Petitioner in Election Petition 3 of 1967 will bear his own costs and pay the cost of the respondent. Advocate's fee Rs. 2,000/-. The Petitioner in Election Petition 6 of 1967 will bear his own costs and pay the costs of the 1st respondent. Advocate's fee Rs. 2,000/-. The 2nd respondent will bear his own costs.

489. There are one or two matters in the course of recording of evidence which I reserved for consideration at the time of the arguments. Rest of the objections raised have been dealt with. Those that were postponed were objections relating to whether a particular answer was or was not within the scope of relevancy. As no occasion has arisen for me to depend upon any of those answers in the course of the discussion of the evidence, I do not think it is necessary now for me to decide those objections. If necessary, my answer is that the objections are overruled.

490. A record my gratitude for counsel on both the sides for assistance rendered to me by careful analysis of the details of the evidence and instructive arguments on points of law.

Sd/- A. NARAYANA PAI,
Judge.

[No. 82/MY-HP/3/67.]

By order,
K. S. RAJAGOPALAN, Secy.

New Delhi, the 9th May 1968

S.O. 1851.—In pursuance of section 111 of the Representation of the People Act, 1951, (43 of 1951), the Election Commission hereby publishes the order dated the 26th February, 1968, passed by the Bombay High Court in Election Petition No. 5 of 1967.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ELECTION PETITION NO. 5 OF 1967

In the matter of Representation of the Peoples Act of 1951.

In the matter of Election to the House of the People from Bombay North West Constituency.

Harl Ramchandra Gokhale.—Petitioner.

Versus

1. Bharucha Naushir Cursetji, Botawalla and others.—Respondents.

Coram:

26th February, 1968.

(4 P.M.)

Recalled from 29th January, 1968—Election Petition for hearing and final disposal.

Mr. Y. S. Chitale with Mr. F. S. Narlman and Mr. M. O. Chinoy for the Petitioner.

Mr. M. R. Mody with Mr. A. N. Mody for Respondent 8.

Mr. R. J. Joshi for the Respondent 9.

Oral Order dictated to Mr. Kotate.

P.C.:—Application for withdrawal granted.

I direct that notice of withdrawal be published in the Gazette of India, as required by clause (b) of sub-section (3) of section 110 of the Representation of the People Act, 1951.

I also direct that the fact of withdrawal be reported to the Election Commission as required by section 111 of the said Act, and to the Speaker of the Lok Sabha.

I order that the sum of Rs. 1,500/- which was deposited in Court by the 8th Respondent pursuant to my Order dated 14th November 1967, be paid by the Petitioner to the 8th Respondent, as the said deposit was to abide the ultimate orders of the court at the time of disposal of this petition. The Petitioner must also pay to the 8th Respondent a sum of Rs. 103/- which was paid by the 8th Respondent to the Scrutineer in respect of certain miscellaneous expenses relating to the scrutiny.

The Petitioner must pay to the Scrutineer the balance of Rs. 3,600/- which remains payable to him after the withdrawal by him as part of his fees the amount deposited in Court by the parties.

For the reasons stated in the Order, the Petitioner should pay to the 9th Respondent a sum of Rs. 350/- in respect of the costs of this Petition.

I direct that the ballot papers, together with the statutory forms and all other papers, be returned to the District Election Officer from whose custody they were taken charge of by this Court pursuant to the Consent Order passed by the Supreme Court.

I direct that the Police guard be discontinued from the time that the said documents are returned to the District Election Officer, and that the steel trunks obtained by the Prothonotary from the Petitioner be returned to him.

I also order that the Petitioner to pay the amounts mentioned against each of the persons mentioned in the Order relating to the scrutiny.

The amount of Rs. 2,000/- deposited by the Petitioner along with the Petition under section 117 of the said Act will be adjusted towards the amounts payable by the Petitioner as per this Order. In accordance with the provisions of section 121 of the said Act, I order that the 8th and 9th Respondents will be at liberty to withdraw, out of the said deposit, the amounts that have been awarded by me to them today.

(Sd.) M. S. PAI.

[No. F.82/S/BY/67.]

By Order,

A. N. SEN. Secy.